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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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HONORABLE MICHAEL J. DAVIS, DISTRICT JUDGE PRESIDING

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IN RE THE: BAYCOL PRODUCTS )  
LITIGATION, )  
 ) CASE NO. MDL 1431  
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REPORTER'S TRANSCRIPT OF PROCEEDINGS

LOS ANGELES, CALIFORNIA  
THURSDAY, JULY 11, 2002

MARGARET J. BABYKIN  
COURT REPORTER  
429J - U. S. DISTRICT COURTHOUSE  
312 NORTH SPRING STREET  
LOS ANGELES, CALIFORNIA 90012

1 APPEARANCES:

2 ON BEHALF OF THE PLAINTIFF:

3 ZIMMERMAN REED, PLLP  
4 BY: MR. ZIMMERMAN  
5 RONALD S. GOLDSER  
6 ATTORNEYS AT LAW  
7 651 NICOLLET MALL  
8 SUITE 501  
9 MINNEAPOLIS, MINNESOTA 55402

7 LOCKRIDGE GRINDAL NAUEN PLLP  
8 BY: RICHARD A. LOCKRIDGE  
9 ATTORNEY AT LAW  
10 SUITE 900, SOUTH BUILDING  
11 601 PENNSYLVANIA AVENUE, N.W.  
12 WASHINGTON, D.C. 20004

10 STANLEY M. CHESLEY  
11 ATTORNEY AT LAW  
12 1513 CENTRAL TRUST TOWER  
13 CINCINNATI, OHIO 45202

13 RODA & NAST, PC  
14 BY: DIANNE M. NAST  
15 ATTORNEY AT LAW  
16 801 ESTELLE DRIVE  
17 LANCASTER, PENNSYLVANIA 17601

16 LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP  
17 BY: ELIZABETH J. CABRASER  
18 ATTORNEY AT LAW  
19 EMBARCADERO CENTER WEST  
20 275 BATTERY STREET, 30TH FLOOR  
21 SAN FRANCISCO, CALIFORNIA 94111

19 COTCHETT, PITRE, SIMON & MC CARTHY  
20 BY: FRANK M. PITRE  
21 ATTORNEY AT LAW  
22 SAN FRANCISCO AIRPORT OFFICE CENTER  
23 840 MALCOLM ROAD  
24 SUITE 200  
25 BURLINGAME, CALIFORNIA 94010

1 APPEARANCES: (CONTINUED)

2 ON BEHALF OF THE DEFENDANT:

3

DORSEY & WHITNEY  
4 BY: PETER W. SIPKINS  
ATTORNEY AT LAW  
5 50 SOUTH 6TH STREET  
MINNEAPOLIS, MINNESOTA 55402

6

SIDLEY AUSTIN BROWN & WOOD  
7 BY: SUSAN A. WEBER  
ATTORNEY AT LAW  
8 BANK ONE PLAZA  
10 SOUTH DEARBORN STREET  
9 CHICAGO, ILLINOIS 60603

10

SIDLEY AUSTIN BROWN & WOOD  
11 BY: CATHERINE VALERIO BARRAD  
ATTORNEY AT LAW  
12 555 WEST FIFTH STREET  
LOS ANGELES, CALIFORNIA 90013

11

12

13

DECHERT PRICE & RHOADS  
14 BY: KATHRYN L. CONNELLY  
ATTORNEY AT LAW  
4000 BELL ATLANTIC TOWER  
15 1717 ARCH STREET  
PHILADELPHIA, PENNSYLVANIA 19103

16

DUNN, ROGASKI, PREVOLOS, WEBER & PATTERSON, LLP  
17 BY: LINDA R. SCHAAP  
ATTORNEY AT LAW  
18 241 GEORGIA STREET  
P.O. BOX 1072  
19 VALLEJO, CALIFORNIA 94590

20

LAW OFFICES OF DAVID F. BEACH  
21 BY: ROSE MARIE TANTILLO  
ATTORNEY AT LAW  
22 111 SANTA ROSA AVENUE  
SUITE 202  
23 SANTA ROSA, CALIFORNIA 95404

23

24

25

1 APPEARANCES: (CONTINUED)

2 ON BEHALF OF DEFENDANT:

3

PROVOST \* UMPHREY \* YOUNGDAHL \* SADIN PC

4 BY: JOSEPH ARSHAWSKY

ATTORNEY AT LAW

5 ALBUQUERQUE OFFICE

9621 FOURTH STREET NW

6 ALBUQUERQUE, NEW MEXICO 87114

7 CHIMICLES & TIKELLIS LLP

8 BY: STEVEN A. SCHWARTZ

ATTORNEY AT LAW

9 ONE HAVERFORD CENTRE

361 WEST LANCASTER AVENUE

HAVERFORD, PENNSYLVANIA 19041

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MDL NO. 1431

JULY 11, 2002

PROCEEDINGS: DEFENDANTS' MOTION FOR:  
LONGS' MOTION TO STRIKE AND DISMISS;  
MOTION RUONA;  
MOTION TO COMPEL;  
MOTION FOR EXTENSION;  
THIRD-PARTY PAYOR MOTION;  
STATUS CONFERENCE

1 LOS ANGELES, CALIFORNIA; THURSDAY, JULY 11, 2002; 9:30 A.M.

2 THE CLERK: ALL RISE. COME TO ORDER, PLEASE.

3 THIS UNITED STATES DISTRICT COURT IS NOW IN  
4 SESSION.

5 THE HONORABLE MICHAEL J. DAVIS, JUDGE PRESIDING.

6 THE COURT: GOOD MORNING.

7 PLEASE BE SEATED.

8 THE CLERK: IN THE MATTER OF CALENDAR ITEM NUMBER  
9 1, MDL NUMBER 1431, IN RE THE BAYCOL PRODUCTS LIABILITY  
10 LITIGATION.

11 COUNSEL -- NOT EVERYBODY. COUNSEL, PLEASE STATE  
12 YOUR APPEARANCES, PLEASE.

13 MR. LOCKRIDGE: GOOD MORNING, YOUR HONOR.

14 RICHARD LOCKRIDGE FROM MINNEAPOLIS ON BEHALF OF THE  
15 PLAINTIFFS.

16 AND I MIGHT SAY THAT MR. ZIMMERMAN IS APPARENTLY  
17 STUCK IN TRAFFIC AND WILL BE HERE SHORTLY.

18 THE COURT: ALL RIGHT.

19 IS THIS MICROPHONE ON?

20 (THE COURT AND CLERK CONFERRING.)

21 THE COURT: CAN YOU ALL HEAR ME?

22 MR. CHESLEY: YOUR HONOR, STANLEY CHESLEY FROM  
23 CINCINNATI, OHIO, FOR THE PLAINTIFFS.

24 C-H-E-S-L-E-Y.

25 THE COURT: GOOD MORNING.

1 MS. NAST: GOOD MORNING, YOUR HONOR.

2 DIANNE NAST FOR THE PLAINTIFFS.

3 THE COURT: GOOD MORNING.

4 MS. CABRASER: GOOD MORNING, YOUR HONOR.

5 ELIZABETH CABRASER FOR PLAINTIFFS.

6 THE COURT: GOOD MORNING.

7 MR. SIPKINS: GOOD MORNING, YOUR HONOR.

8 PETER SIPKINS FROM MINNEAPOLIS ON BEHALF OF  
9 DEFENDANT BAYER.

10 THE COURT: GOOD MORNING.

11 MS. WEBER: GOOD MORNING, YOUR HONOR.

12 SUSAN WEBER ON BEHALF OF DEFENDANT BAYER.

13 THE COURT: GOOD MORNING.

14 MS. BARRAD: GOOD MORNING, YOUR HONOR.

15 CATHERINE BARRAD ON BEHALF OF DEFENDANT BAYER  
16 CORPORATION.

17 THE COURT: GOOD MORNING.

18 MS. CONNELLY: GOOD MORNING, YOUR HONOR.

19 KATHY CONNELLY ON BEHALF OF DEFENDANT  
20 GLAXOSMITHKLINE.

21 THE COURT: GOOD MORNING. AND WE HAVE A NUMBER OF  
22 ATTORNEYS THAT ARE IN THE WELL.

23 AND I SEE ATTORNEY LOPEZ, RAMON LOPEZ.

24 PLEASE, RISE.

25 AND I WOULD LIKE TO THANK YOU FOR YOUR HOSPITALITY

1 FOR HAVING ME OUT HERE IN CALIFORNIA. AND WE HAD A GREAT  
2 MEETING YESTERDAY. AND IT'S A PLEASURE TO HAVE YOU HERE  
3 TODAY.

4 MR. LOPEZ: YOU ARE WELCOME ANYTIME, YOUR HONOR.  
5 IT'S AN OPEN INVITATION.

6 THANK YOU.

7 THE COURT: ALL RIGHT. LET'S CALL THE REMAND  
8 MOTION -- RUONA V. BAYER.

9 MR. PITRE: GOOD MORNING, YOUR HONOR.

10 THE COURT: GOOD MORNING.

11 MR. PITRE: FRANK PITRE APPEARING ON BEHALF OF MS.  
12 RUONA, THE PLAINTIFF DECEDENT.

13 AND WELCOME TO CALIFORNIA.

14 THE COURT: THANK YOU.

15 MS. SCHAAP: GOOD MORNING, YOUR HONOR.

16 LINDA SCHAAP APPEARING ON BEHALF OF DEFENDANT  
17 WILLIAM CARROLL, M.D.

18 THE COURT: GOOD MORNING.

19 MS. BARRAD: GOOD MORNING, YOUR HONOR.

20 CATHERINE BARRAD ON BEHALF OF DEFENDANT BAYER  
21 CORPORATION.

22 THE COURT: MOVE RIGHT INTO THE MOTION TO REMAND.

23 MR. PITRE: I WOULD LIKE TO SPEAK, YOUR HONOR, IF I  
24 MAY --

25 THE COURT: YOU MAY.

1 MR. PITRE: -- FOR THE PLAINTIFFS.

2 THANK YOU, YOUR HONOR.

3 THE COURT: WHY DON'T YOU BE SEATED. I'LL GIVE YOU  
4 15 MINUTES PER SIDE. SO, YOU DON'T HAVE TO STAND FOR THE  
5 WHOLE THING.

6 MR. PITRE: FIRST OF ALL, I APPRECIATE THE COURT  
7 COMING TO CALIFORNIA TO HAVE THIS MOTION HEARD, SO I DIDN'T  
8 HAVE TO FLY ALL THE WAY TO MINNESOTA DURING THE SUMMER.  
9 BUT AS THE COURT MAY KNOW, THIS CASE WAS FILED IN  
10 OCTOBER OF 2001. IN OCTOBER OF 2001 WHEN THE CASE WAS FILED,  
11 PARAGRAPH 10 OF THIS COMPLAINT TOLD ALL THE DEFENDANTS THAT  
12 THE PLAINTIFFS INTENDED TO FILE A LAWSUIT AGAINST THE  
13 PHYSICIANS. THE PHYSICIANS THAT WERE RESERVED WERE FIVE, AS  
14 PERMITTED UNDER CALIFORNIA LAW, THE DOE DEFENDANT STATUTE.  
15 AT THAT TIME, I WAS PRECLUDED UNDER CALIFORNIA LAW  
16 FROM NAMING THEM AS DEFENDANTS BECAUSE THERE IS A CODE OF  
17 CIVIL PROCEDURE STATUTE, 364, THAT SAYS YOU MUST GIVE THOSE  
18 DOCTORS A 90-DAY NOTICE.  
19 I LAID THAT OUT IN MY COMPLAINT. I TOLD THEM WHO  
20 THEY WERE. DIDN'T PUT THEIR NAMES IN. TOLD THEM WHERE THEY  
21 RESIDED. AND TOLD THEM THAT I DIDN'T NAME THEM BECAUSE OF  
22 THE PROSCRIPTION UNDER CALIFORNIA LAW.  
23 WITHIN 30 DAYS, I WAS REMOVED. AFTER I WAS  
24 REMOVED, WITHIN SIX WEEKS OF THAT DATE, I FILED ON DECEMBER  
25 14TH, ROUGHLY, A MOTION TO REMAND IN THE NORTHERN DISTRICT

1           BEFORE JUDGE WALKER.

2           BECAUSE OF AN INTER-DISTRICT TRANSFER, THAT MOTION

3           THAT WAS CALENDARED FOR HEARING WAS THEN TRANSFERRED TO THE

4           SOUTHERN DISTRICT, SOUTHERN DIVISION, BEFORE JUDGE FOGEL. I

5           HAD TO REFILE MY MOTION.

6           IN THE INTERIM, THERE WAS A CONDITIONAL TRANSFER

7           ORDER. AND BECAUSE OF THE CONDITIONAL TRANSFER ORDER, I HAD

8           TO FILE MY MOTION FOR REMAND ONCE AGAIN TO TELL THE COURT

9           THIS CASE DOESN'T BELONG HERE.

10          AFTER THE CONDITIONAL TRANSFER ORDER WAS GRANTED,

11          AND IT TRANSFERRED, I FILED MY MOTION FOR REMAND ONCE AGAIN.

12          SO, THE REASON THAT I AM HERE AFTER ALL OF THAT

13          TIME AND BECAUSE OF THE PROCEDURAL AND ADMINISTRATIVE HURDLES

14          IS THAT NOW I AM IN A POSITION WHERE I HAVE TO ASK THIS COURT

15          TO PLEASE JOIN THIS DOCTOR AS A DEFENDANT UNDER DIFFERENT

16          RULES THAN I WOULD HAVE UNDER CALIFORNIA LAW.

17          THERE IS NO QUESTION -- AND I HAVE HEARD NOBODY

18          DISPUTE THE FACT THAT THERE IS NOT A LEGITIMATE VIABLE CLAIM

19          THAT IS BEING ASSERTED, PARTICULARLY, UNDER THE CIRCUMSTANCES

20          ALLEGED IN PARAGRAPH 24 AND PARAGRAPH 30 OF THE COMPLAINT.

21          UNDER PARAGRAPH 24 AND PARAGRAPH 30, IT WAS ALLEGED

22          THAT THE PLAINTIFF HERE, NOW DECEASED, WAS PRESCRIBED AN

23          8-MILLIGRAM DOSE OF BAYCOL. THE PRESCRIPTION OCCURRED IN MAY

24          OF 2001.

25          AND IN PARAGRAPH 24 TO 30, IT IS ALSO ALLEGED THAT

1 THAT WAS THE TIME WHEN LETTERS HAD BEEN ISSUED, WARNINGS,  
2 CAUTIONARY WARNINGS, BY BAYER TO VARIOUS PHYSICIANS ABOUT THE  
3 TYPE OF DOSE AND, IN PARTICULAR, THE 8-MILLIGRAM DOSE.  
4 SO, THERE CAN BE NO QUESTION HERE THAT THERE ARE  
5 GOING TO BE FACTUAL ISSUES THAT ARE INTERTWINED REGARDING  
6 WHETHER OR NOT THE DOCTOR, PERHAPS, FOLLOWED THE ADVICE OF  
7 BAYER IN TERMS OF ITS CAUTIONARY INSTRUCTIONS IN THE MANNER  
8 IN WHICH THEY TREATED THE DECEDENT BECAUSE BY -- IN MAY OF  
9 2001, SHE WAS ALIVE TAKING BAYCOL. AND BY JULY 19TH, SHE WAS  
10 DEAD.

11 THERE ARE GOING TO BE PEOPLE WHO ARE GOING TO CROSS  
12 FIRE AGAINST ONE ANOTHER IN TERMS OF WHETHER OR NOT THESE  
13 ADMONITIONS WERE ADHERED TO AND WHETHER OR NOT THE TREATMENT  
14 WAS PROPER.

15 IF THIS COURT SHOULD DENY THE PLAINTIFFS THE  
16 ABILITY TO BRING BOTH PEOPLE INTO THE SAME COURTROOM SO THAT  
17 THE SAME PEOPLE CAN VIEW THESE PEOPLE WHEN THEY TESTIFY, I  
18 WILL BE FORCED IN A SITUATION WHERE I WILL BE TRYING ONE CASE  
19 IN THE FEDERAL COURT, AND I'LL BE TRYING A SECOND CASE IN THE  
20 STATE COURT. AND IN EACH CASE, THERE WILL BE AN EMPTY CHAIR  
21 NEXT TO ONE OF THE DEFENDANTS.

22 I WILL BE FORCED TO HAVE MY EXPERTS TESTIFY IN  
23 PARALLEL PROCEEDINGS. THERE WILL BE A WASTE OF JUDICIAL  
24 RESOURCES IN HAVING TWO FINE JUDGES HAVE TO LISTEN TO THE  
25 SAME KINDS OF EVIDENCE WHERE FINGER-POINTING TAKES PLACE.

1 AND THERE IS GOING TO BE THE POTENTIAL OF INCONSISTENT  
2 OBLIGATIONS AND RIGHTS IMPOSED IN BOTH OF THOSE CASES.  
3 THAT'S NOT THE PURPOSE, AS I UNDERSTAND IT, OF  
4 14.7(E) AND THE TESTS THAT HAVE BEEN ROUTINELY APPLIED BY ALL  
5 COURTS, WHICH IS TO CONSIDER ALL THE EQUITIES OF THE  
6 SITUATION.

7 I HAVE BEEN CRITICIZED, JUDGE, IN THESE PAPERS  
8 BECAUSE THEY SAID THAT I DID NOT GIVE NOTICE TO THE DOCTOR  
9 UNTIL 90 DAYS AFTER I FILED MY CASE. AND THAT, THEY SAY, IS  
10 DELAY.

11 JUDGE, IF A LAWYER EXERCISES THEIR ETHICAL  
12 OBLIGATIONS IN MAKING SURE THEY HAVE IDENTIFIED ALL DOCTORS  
13 WHO WERE INVOLVED IN THE TREATMENT BETWEEN MAY OF 2001 AND  
14 JULY, AND THEY TOOK 90 DAYS TO MAKE SURE THAT THEY DIDN'T  
15 NAME A DOCTOR WHO SHOULDN'T BE NAMED, AND AS SOON AS THEY DID  
16 THAT, THEY GAVE THE REQUIRED NOTICE, I DON'T THINK THAT'S THE  
17 KIND OF DELAY -- I DON'T THINK THAT'S THE KIND OF PREJUDICE  
18 I DON'T THINK THAT'S THE KIND OF LACK OF VIGILANCE THAT  
19 IS ADDRESSED BY THE CASES THAT HAVE BEEN CITED BY THE  
20 DEFENDANTS.

21 AND, IN PARTICULAR, A CASE THAT THEY SEEM TO CITE  
22 THE MOST IS THE CLINCO CASE, WHICH IS, I BELIEVE, JUDGE  
23 PREGERSON'S DECISION -- NOW JUSTICE PREGERSON'S DECISION.  
24 THIS CASE IS NO CLINCO. THIS IS NOT A CASE WHERE,  
25 AS JUDGE PREGERSON FOUND IN CLINCO, THE CLAIMS THAT WERE

1 BEING ASSERTED WERE NOT VIABLE AND NOT LIKELY TO SUCCEED.  
2 IT IS NOT A CASE LIKE CLINCO WHERE JUDGE PREGERSON  
3 FOUND THAT THE ONLY REASON THE AMENDMENT WAS MADE WAS TO  
4 DESTROY THE COURT'S DIVERSITY.  
5 THE PLAINTIFF TOLD EVERYBODY EXACTLY WHO WAS GOING  
6 TO BE NAMED AT THE OUTSET. I DIDN'T TRY TO MANUFACTURE A NEW  
7 DEFENDANT FOR THE SOLE PURPOSE OF CREATING A DEFENDANT. I  
8 TOLD EVERYONE AT THE OUTSET. THEY KNEW WHO IT WAS. THEY  
9 KNEW WHAT MY INTENT WAS BECAUSE I PUT IT RIGHT IN THE  
10 COMPLAINT.  
11 SO, I AM NOT MANUFACTURING ANYTHING. AND I AM NOT  
12 TRYING TO DESTROY DIVERSITY. AND I AM TRYING TO BRING ALL  
13 PARTIES TO THE TABLE WHO SHOULD BE HERE.  
14 THIS IS NOT LIKE CLINCO WHERE THERE HAS BEEN A  
15 DELAY. I HAVE BEEN VIGILANT THROUGHOUT THIS PROCEEDING,  
16 STARTING IN OCTOBER THROUGH DECEMBER, IN THE THREE DIFFERENT  
17 TIMES I FILED MY MOTION TO REMAND AND BRING THE PEOPLE'S  
18 ATTENTION TO WHAT I WAS DOING IN GIVING NOTICE OF INTENT TO  
19 SUE ACCORDING TO THE ETHICAL AND LEGAL OBLIGATIONS I HAD  
20 UNDER CALIFORNIA LAW.  
21 AND, FINALLY, COMING HERE TODAY ASKING PERMISSION  
22 FOR THE COURT TO JOIN THE DEFENDANT IN THIS PROCEEDING SO I  
23 AND OTHERS DON'T HAVE TO WASTE VALUABLE JUDICIAL AND LEGAL  
24 RESOURCES IN PARALLEL PROCEEDINGS. SO I CAN GO BACK INTO THE  
25 STATE COURT, JOIN MR. LOPEZ AND THE OTHER LAWYERS, AND PURSUE

1 MY CASE IN A STATE COURT, WHICH IS WHERE IT BELONGS.  
2 JUDGE, IN ESSENCE, I THINK WHEN YOU LOOK AT THE  
3 EQUITIES OF THE SITUATION, WHEN YOU LOOK AT THE LEGAL  
4 REQUIREMENTS, THIS IS A CASE THAT PROPERLY SHOULD BE IN STATE  
5 COURT.

6 THE DEFENDANT DOCTOR SHOULD BE JOINED AS A PARTY SO  
7 THAT THE CASE CAN EFFICIENTLY BE PROCESSED TO CONCLUSION WITH  
8 ALL REQUIRED PARTIES SO THAT NOBODY CAN POINT TO ANY EMPTY  
9 CHAIRS.

10 I THANK THE COURT FOR THE TIME.

11 THE COURT: THANK YOU, COUNSEL.

12 GOOD MORNING.

13 MS. BARRAD: GOOD MORNING, YOUR HONOR.

14 THE PLAINTIFF APPEARS TO HAVE REJECTED OR IS NO  
15 LONGER PURSUING TWO OF HER THREE REASONS FOR REMAND IN THIS  
16 CASE THAT LONGS WAS FRAUDULENTLY JOINED, AND THAT THE  
17 CITIZENSHIP OF DOE DEFENDANTS SHOULD BE CONSIDERED IN  
18 DETERMINING WHETHER DIVERSITY JURISDICTION IS MET.

19 AND, SO, I AM NOT GOING TO ADDRESS EITHER OF THOSE  
20 THINGS, BUT, RATHER, STAND ON OUR PAPERS FOR THAT AND,  
21 INSTEAD, ADDRESS THE POINTS THAT COUNSEL RAISED IN ARGUMENT.

22 THE FIRST THING THAT I WANTED TO ADDRESS IS WHETHER  
23 THESE CLAIMS REALLY ARE INTERTWINED.

24 THE PLAINTIFF HAS CONCEDED THAT THE DOCTOR IS NOT  
25 AN INDISPENSABLE PARTY. AND THAT, THEN, PUTS US INTO THE

1 POSITION OF PERMISSIVE JOINDER WHERE THE COURT CAN EXERCISE  
2 ITS DISCRETION IN WHETHER TO PERMIT JOINDER OR NOT.  
3 AND UNDER THE SIX-FACTOR TEST, THE INDISPENSABLE  
4 PARTY REQUIRES ONLY ONE OF THE FACTORS THAT THE COURT WOULD  
5 CONSIDER.  
6 BUT WHAT THE PLAINTIFF IGNORES IS THAT THE FACT  
7 THAT THE DOCTOR WOULD NOT BE IN THE COURTROOM IN THE  
8 PROCEEDING IN THE MDL DOES NOT MEAN THAT THE DOCTOR IS NOT  
9 AVAILABLE.  
10 THE PLAINTIFF CAN COMPEL A DOCTOR TO TESTIFY AT  
11 TRIAL. THE DOCTOR CAN -- THE PLAINTIFF CAN PROCEED  
12 SEPARATELY AGAINST THE DOCTOR. THE PLAINTIFF CAN TREAT THE  
13 DOCTOR AS A THIRD-PARTY WITNESS.  
14 AND AS THE COURT WELL KNOWS, IN THE OVER 800 CASES  
15 THAT ARE IN THE MDL, NO ONE ELSE HAS BEEN ARGUING PREJUDICE  
16 BECAUSE THE DOCTORS THAT MAY OR MAY NOT BE RELEVANT WITNESSES  
17 ARE NOT ACTUALLY INCLUDED AS PARTY DEFENDANTS.  
18 THE EMPTY-CHAIR QUESTION IS A LITTLE SEPARATE. AND  
19 BECAUSE THE DOCTOR IS AVAILABLE FOR A WITNESS -- AS A  
20 WITNESS, THE EMPTY-CHAIR DEFENSE SUGGESTS THERE REALLY  
21 WOULDN'T NECESSARILY BE AN EMPTY CHAIR BECAUSE THEY CAN'T  
22 REALLY PROCEED AGAINST THE DOCTOR IN STATE COURT.  
23 BUT, IN ADDITION, THERE IS JOINT AND SEVERAL  
24 LIABILITY HERE. AND BECAUSE THEY'RE ONLY SEEKING MONETARY  
25 DAMAGES AGAINST THE DEFENDANTS, THE MONETARY DAMAGES WOULD BE

1 FULLY RECOVERABLE IN THE LAWSUIT THAT WOULD REMAIN IN FEDERAL  
2 COURT.

3 WITH RESPECT TO THE DELAY ISSUE, THE DELAY FACTOR  
4 REALLY GOES MORE TO THE EFFECT -- WHAT THE COURT IS  
5 CONSIDERING IS THE DELAY BETWEEN THE FILING OF THE COMPLAINT  
6 AND THE DATE THAT THE COMPLAINT WAS ACTUALLY AMENDED OR THAT  
7 LEAVE WAS SOUGHT TO AMEND THE COMPLAINT.

8 HERE, THE COMPLAINT WAS FILED SIX MONTHS AFTER THE  
9 PLAINTIFF DIED. PRESUMABLY IN THAT SIX MONTHS, PLAINTIFF WAS  
10 INVESTIGATING THE CLAIMS, OBTAINING THE MEDICAL RECORDS,  
11 DETERMINING WHO THE DOCTORS WERE WHO WERE TREATING THE  
12 PLAINTIFF, AND IF, AS I ASSUME IS TRUE, THE PLAINTIFFS'  
13 COUNSEL WAS ABIDING BY THE CALIFORNIA VERSION OF RULE 11  
14 WHILE THIS INVESTIGATION TOOK PLACE BEFORE THE FILING OF THE  
15 COMPLAINT.

16 NEVERTHELESS, PLAINTIFF WAITED TO ISSUE THE 90-DAY  
17 NOTICE OF INTENT TO SUE TO THE DOCTOR UNTIL APPROXIMATELY  
18 THREE MONTHS AFTER THE COMPLAINT WAS FILED. AND THAT WAS AT  
19 ABOUT THE SAME TIME THAT THE CASE WAS -- THAT THE MDL WAS  
20 CREATED, AND THAT THIS CASE WAS PUT ON A CONDITIONAL TRANSFER  
21 ORDER, AND THAT THE PLAINTIFF THEN FILED HIS MOTION TO VACATE  
22 CTO-1.

23 THE 90-DAY LETTER WAS SENT OUT AT ABOUT THAT SAME  
24 TIME. AND, THEN, IN APRIL, AFTER THE JPML HEARD THE MOTION  
25 TO VACATE THE CONDITIONAL TRANSFER ORDER, AND ABOUT

1 CONTEMPORANEOUS WITH THEIR ORDER TRANSFERRING THE CASE AND  
2 DENYING THE MOTION TO VACATE, THE PLAINTIFF WENT AHEAD AND  
3 SERVED -- GOT A SUMMONS FROM THE NORTHERN DISTRICT OF  
4 CALIFORNIA AND SERVED THE DOCTOR IN THIS CASE,  
5 NOTWITHSTANDING, THE REQUIREMENTS OF FEDERAL RULE 15, THAT  
6 REQUIRE HIM TO SEEK LEAVE OF COURT TO AMEND THE COMPLAINT TO  
7 NAME THE DOCTOR.  
8 HE THEN -- THE TRANSFER ORDER WAS FINAL ON APRIL  
9 18TH. AND THE DOCTOR WAS SERVED, ACCORDING TO THE PAPERS, ON  
10 APRIL 25TH. AND THE MOTION TO AMEND IN THIS CASE WASN'T  
11 FILED UNTIL EARLY MAY.  
12 THIS REALLY DEMONSTRATES NOT ONLY DELAY IN SEEKING  
13 TO JOIN THE DOCTOR AS A DEFENDANT, BUT IT ALSO SUGGESTS SOME  
14 SUSPECT MOTIVES IN DELAYING.  
15 NOW, IN CALIFORNIA, THERE IS A PROVISION THAT  
16 PERMITS THE STATUTE OF LIMITATIONS AGAINST THE DOCTOR TO BE  
17 TOLLED BY 90 DAYS IF THE NOTICE FOR INTENT TO SUE IS WITHIN  
18 THIS LETTER -- THE LETTER IS SENT TO THE DOCTOR WITHIN THE  
19 THREE MONTHS BEFORE THE STATUTE RUNS.  
20 AND IT IS POSSIBLE THAT PLAINTIFF WAS WAITING TO  
21 TAKE ADVANTAGE OF THAT. BUT THAT DOESN'T EXPLAIN WHY, IF THE  
22 PLAINTIFF WAS DILIGENT IN GETTING ALL DEFENDANTS BEFORE THE  
23 COURT, SHE WAITED UNTIL NINE MONTHS AFTER THE DECEDENT'S  
24 DEATH IN ORDER TO ISSUE THE INTENT TO SUE. AND ONLY THEN  
25 WOULD IT APPEAR THAT THE COURT -- THAT THE CASE WAS GOING TO

1 HEAD OFF TO FEDERAL COURT.

2 THE ONE FACTOR THAT PLAINTIFFS DID NOT ADDRESS, AND

3 THAT IS SIGNIFICANT, NOT ONLY FOR THIS CASE, BUT ALSO FOR

4 OTHER CASES IN THE MDL, IS THE FACT THAT THIS SUBSTANTIALLY

5 PREJUDICES -- THAT A REMAND IN THIS CASE WOULD SUBSTANTIALLY

6 PREJUDICE BAYER AS WELL AS OTHER DEFENDANTS IF A PLAINTIFF IS

7 PERMITTED TO AT WHATEVER TIME DURING LITIGATION TO NAME A

8 DOCTOR, GET JOINDER OF A DOCTOR, AND GET THE MOTION -- GET

9 THE CASE KICKED BACK TO STATE COURT.

10 AND THAT IS REALLY WHERE WE SEE THE PROBLEM WITH

11 THIS CASE. AND WE ARE -- WE THINK THAT THERE WOULD BE

12 SUBSTANTIAL PREJUDICE TO BAYER OF HAVING TO LITIGATE CLAIMS

13 IN TWO DIFFERENT FORA -- ONCE WE PROCEED DOWN THE ROAD IN THE

14 MDL WITH ALL THE DEPOSITIONS AND THE DOCUMENT PRODUCTIONS AND

15 SO FORTH, AND, THEN, HAVE PLAINTIFFS IN WHATEVER CASE SEEK TO

16 HAVE A CASE REMANDED TO THE STATE COURT EITHER BECAUSE THEY

17 BECOME DISSATISFIED, OR THEY THINK THEY CAN GET A BETTER

18 HEARING THE SECOND TIME AROUND IN STATE COURT.

19 , SO, THAT GREATER MISCHIEF, WE THINK, IS

20 SOMETHING THAT IS-- WEIGHS THAT EQUITIES IN FAVOR OF DENYING

21 JOINDER.

22 IF THE COURT DOESN'T HAVE ANY QUESTIONS ABOUT THE

23 OTHER ASPECTS OF OUR PAPERS, I AM GOING TO CONCLUDE MY

24 REMARKS AT THIS POINT.

25 THE COURT: THANK YOU.

1 COUNSEL.

2 MS. SCHAAP: YOUR HONOR --

3 THE COURT: GOOD MORNING.

4 MS. SCHAAP: -- GOOD MORNING.

5 DR. CARROLL'S POSITION IN THIS MOTION IS BASICALLY  
6 AND SIMPLY TO JOIN IN PLAINTIFFS' REQUEST TO REMAND IN THE  
7 EVENT THAT THE COURT GRANTS THE MOTION TO AMEND.

8 THE COURT: THANK YOU.

9 ALL RIGHT. ANYTHING FURTHER?

10 MR. PITRE: VERY BRIEFLY, YOUR HONOR.

11 I'D LIKE TO ADDRESS THE LAST ISSUE THAT WAS RAISED,  
12 THAT SOMEHOW OR OTHER THIS WOULD SET A BAD PRECEDENT.  
13 YOUR HONOR, I THINK THE TEST IS ONE OF EQUITY AND  
14 THE INTEREST OF JUSTICE.

15 THE INTEREST OF JUSTICE HERE IS HOW TO GET THESE  
16 CASES EFFICIENTLY ADMINISTRATIVE SO THAT THE PARTIES CAN  
17 OBTAIN JUSTICE. I DON'T SEE HOW JUSTICE CAN BE ACHIEVED BY  
18 HAVING TWO CASES PROCEEDING IN TWO DIFFERENT TYPES OF FORUMS  
19 HAVING THE KINDS OF COSTS AND THE TIME AND THE KIND OF BODIES  
20 WE SEE HERE GOING ON IN TWO DIFFERENT PLACES.

21 THAT'S WHAT I WOULD BE FACED WITH IF I AM ASKED, OR  
22 IF THE COURT DENIES MY JOINDER, THAT I HAVE TO IN MY DOCTOR  
23 CASE HAVE TO PROCEED WITH, PERHAPS, A STATE-COORDINATED CASE  
24 WITH THE DOCTOR -- MAYBE. MAYBE NOT AND, THEN, PROCEED WITH  
25 THE MDL AND ALL OF THE COSTS AND TIME THAT ARE ASSOCIATED

1 WITH THAT.

2 BUT WORSE THAN THAT, THIS ISSUE OF THE EMPTY CHAIR  
3 IS NOTHING THAT IS SLIGHT. BECAUSE, YOU SEE, UNDER  
4 CALIFORNIA LAW, THERE IS GOING TO BE A COMPARATIVE-FAULT  
5 ANALYSIS WHERE JURORS ARE GOING TO BE ASKED TO PUT A  
6 PERCENTAGE OF FAULT IN VARIOUS BOXES AS TO WHETHER OR NOT ANY  
7 OF THESE PARTIES ARE RESPONSIBLE FOR THEIR DAMAGES.

8 YOU'RE NOT GOING TO GET THE SAME TYPE OF LITIGATION  
9 WHERE SOMEBODY IS JUST A WITNESS AS YOU WOULD GET IF THE  
10 PARTY HAD THE OPPORTUNITY TO HAVE COUNSEL PRESENT TO CALL  
11 WITNESSES AND PRESENT THEIR ENTIRE CASE.

12 I SHOULDN'T HAVE TO IN BOTH CASES HAVE TO PUT ON A  
13 CASE AGAINST BAYER AND A CASE AGAINST THE DOCTOR WITHOUT THE  
14 BENEFIT OF HAVING THE JURORS LISTEN TO ALL EVIDENCE WITH  
15 HAVING THE BEST AND THE BRIGHTEST LAWYERS AND THE BEST  
16 OPPORTUNITY TO PRESENT THEIR VARIOUS CASES ON WHY THEY ARE  
17 NOT RESPONSIBLE. THIS SHOULD BE DONE IN ONE PLACE. IT  
18 SHOULD BE DONE IN STATE COURT.

19 THANK YOU.

20 THE COURT: THANK YOU.

21 I WILL TAKE THIS MATTER UNDER ADVISEMENT.

22 GOOD MORNING, MR. ZIMMERMAN.

23 MR. ZIMMERMAN: GOOD MORNING, YOUR HONOR.

24 I THINK I AM THE EMPTY CHAIR. I APOLOGIZE. 100  
25 PERCENT OF THE FAULT IS MINE.

1 I THINK WE'RE ON THE JOINT STATUS REPORT. AND I  
2 BELIEVE IT'S BEEN FILED WITH THE COURT AND COPIES  
3 DISTRIBUTED. IT'S A NINE-ITEM AGENDA -- A FEW OF THE ITEMS,  
4 OF COURSE, WILL HAVE TO BE ARGUED. MOST OF THEM ARE  
5 BASICALLY UPDATES TO THE COURT AND TO COUNSEL THAT ARE HERE.  
6 THE FIRST ITEM, I BELIEVE, IS THE UPDATE ON THE  
7 ROLLING DOCUMENT PRODUCTION. THERE HAS BEEN A LOT OF WORK IN  
8 THE DOCUMENT DEPOSITORY. THERE HAS BEEN A LOT OF WORK IN THE  
9 IN THE RECEIPT OF CD ROMS AND THE REVIEW OF CD ROMS.  
10 AND I WOULD LIKE TO ASK RON GOLDSER, WHO HAS BEEN  
11 VERY HANDS ON IN THE DOCUMENT DEPOSITORY, TO BRING UP THE  
12 COURT AND COUNSEL UP TO DATE ON THE DOCUMENT PRODUCTION.  
13 THE COURT: GOOD MORNING, MR. GOLDSER.  
14 MR. GOLDSER: GOOD MORNING, YOUR HONOR.  
15 THE REPORT, OF COURSE, SPEAKS FOR ITSELF. I DON'T  
16 KNOW IF EVERYONE IN THE COURTROOM HAS THE BENEFIT OF A COPY,  
17 BUT, BASICALLY, BAYER HAS GIVEN US OVER 100 CD'S. AND  
18 GLAXOKLINE HAS GIVEN US ALMOST 40 CD'S.  
19 WE NOW HAVE A LOT OF INFORMATION COMING IN ON  
20 THIRD-PARTY SUBPOENAS. AND WE HAVE REMOTE ACCESS AVAILABLE  
21 IN THE DOCUMENT DEPOSITORY. AND THAT IS UP AND RUNNING AND  
22 WORKING JUST FINE.  
23 I AM GENERALLY PRETTY SATISFIED WITH THE WAY THE  
24 DOCUMENT PRODUCTION IS GOING. WE GET REGULAR CD'S. IT  
25 SOMETIMES FEELS LIKE CHRISTMAS IN THE FIRST WEEK OF EVERY

1 MONTH AS A NEW BOX ARRIVES FROM ONE DEFENDANT OR ANOTHER.  
2 WE'RE NOT WITHOUT SOME PROBLEMS. THERE ARE SOME  
3 ISSUES THAT ARE HARDLY INSURMOUNTABLE. FOR EXAMPLE, THERE  
4 HAVE BEEN OCCASIONAL PRODUCTIONS WHERE DOCUMENTS THAT ARE  
5 PRIVILEGED TURN UP ON THE CD'S. AND WE HAVE TO SEND THEM  
6 BACK AND START ALL OVER AGAIN. THAT'S BEEN A BIT OF AN  
7 ISSUE. AND, APPARENTLY, IT'S JUST AGAIN RESURFACED. AND I  
8 HAVEN'T EVEN HAD THE OPPORTUNITY TO TALK WITH COUNSEL ABOUT  
9 IT, BUT, CERTAINLY, WE WILL.  
10 WE HAVE TO MOVE A LITTLE BIT FASTER ON SOME OF THE  
11 ISSUES. AND PART OF THE RESPONSIBILITY CERTAINLY IS MINE  
12 WORKING OUT E-MAIL SEARCH TERMS SO THAT WE CAN E-MAIL TRAFFIC  
13 -- THE SEARCH CAN PRODUCE. WE HAVEN'T COMPLETED THAT YET.  
14 I WOULD LIKE TO BE ABLE TO MOVE THAT FASTER.  
15 I'D LIKE TO BE ABLE TO MOVE THE DOCUMENT PRODUCTION  
16 WITH REGARD TO THE DEPOSITION WITNESSES A LITTLE FASTER SO WE  
17 CAN MAKE SURE THAT ALL THE DEPOSITIONS STAY ON TRACK.  
18 WE HAVE SOME MINOR ISSUES IN THE OBJECTIVE CODING  
19 THAT WAS JUST PRODUCED A COUPLE OF DAYS AGO. FOR THE MOST  
20 PART, THAT'S WORKED JUST FINE. AND THERE ARE A COUPLE OF  
21 MINOR ISSUES THERE.  
22 SO, THOSE ARE THE KINDS OF PROBLEMS THAT WE'RE  
23 FACING. AS YOU CAN SEE, THEY'RE NOT VERY SIGNIFICANT. I  
24 THINK THE WORKING RELATIONSHIP WITH COUNSEL -- BOTH BAYER AND  
25 SMITHKLINE HAVE BEEN GOING QUITE WELL IN WORKING ON ANY

1 ISSUES THAT WE HAVE. AND I AM QUITE SATISFIED THAT WE'RE  
2 MOVING ALONG AND MOVING ALONG VERY QUICKLY WITH AN EYE  
3 TOWARDS TRYING THE CASE IN EARLY 2003.

4 MR. ZIMMERMAN: IS THERE ANY STATUS ON REMOTE  
5 ACCESS AND --

6 MR. GOLDSER: ON REMOTE ACCESS, YOUR HONOR, MR.  
7 ZIMMERMAN ASKED ME TO ADDRESS A LITTLE FURTHER, MDL COUNSEL  
8 DO HAVE THE ABILITY TO ACCESS DOCUMENTS REMOTELY FROM THEIR  
9 HOME OFFICES.

10 THERE ARE SIGN-INS. THERE ARE SERIOUS SECURITY  
11 PRECAUTIONS THAT ARE TAKEN TO INSURE THAT ACCESS IS  
12 APPROPRIATE TO THE PEOPLE WHO ARE AUTHORIZED. YOU CAN GET --  
13 SEARCH IS AVAILABLE AT THIS POINT. WE DON'T HAVE THE CODING  
14 SEARCH AVAILABLE, BUT THAT WILL BE AVAILABLE, I EXPECT,  
15 FAIRLY SOON WHERE YOU DOWNLOAD THE IMAGES. HIGH SPEED  
16 ACCESS, OF COURSE, IS MOST IMPORTANT. MODEM ACCESS DOESN'T  
17 -- IMAGES VERY QUICKLY.

18 MR. ZIMMERMAN: WHAT DOES REMOTE ACCESS REALLY  
19 MEAN?

20 WHAT DOES THAT ALLOW US TO DO?

21 MR. GOLDSER: WHAT REMOTE ACCESS ALLOWS -- THIS IS  
22 KIND OF FUN WITH THE QUESTION AND ANSWER.

23 WHAT REMOTE ACCESS ALLOWS FOR US TO DO IS BE ABLE  
24 TO DO THE KIND OF WORK IN DEPOSITION PREPARATION OR ISSUE  
25 EVALUATION FROM THEIR HOME OFFICE. IT ALLOWS DEPOSITION

1 TAKERS TO HAVE ACCESS TO THE FULL DEPOSITORY WHILE IN THE  
2 MIDDLE OF A DEPOSITION. IF THE ARRANGEMENTS ARE MADE, WE CAN  
3 GET NOT ONLY THE DOCUMENTS IN FRONT OF YOU, BUT IF YOU HAVE  
4 THE APPROPRIATE PRINTING CAPABILITIES, YOU CAN BE SITTING IN  
5 THE MIDDLE OF A DEPOSITION, THE WITNESS WILL SAY SOMETHING  
6 THAT YOU HAVE SOMEBODY DOING SEARCHES ON THAT IS ENTIRELY  
7 CONTRADICTED BY THE DOCUMENTS THAT WERE NOT ANTICIPATED, AND  
8 THAT DOCUMENT CAN BE PRODUCED RIGHT IN THE MIDDLE OF THE  
9 DEPOSITION AND CROSS-EXAMINATION DONE APPROPRIATELY RIGHT ON  
10 THE SPOT.

11 IT ALLOWS LAWYERS IN CALIFORNIA AND TEXAS AND  
12 PENNSYLVANIA AND MAINE AND FLORIDA TO BE WRITING BRIEFS AND  
13 -- EVEN A CLASS CERTIFICATION AND SUMMARY JUDGMENT AND OTHER  
14 MOTION -- OF THE EVIDENCE, THAT THEY CAN HAVE EVERYTHING  
15 RIGHT AT THEIR FINGERTIPS WITHOUT HAVING TO UNDERTAKE THE  
16 TIME AND EXPENSE OF TRAVEL.

17 HAVE I MISSED ANYTHING ELSE?

18 THE COURT: DEALING WITH VERILAW, I HAVE NOTICED  
19 THAT THERE'S BEEN SEVERAL TIMES THAT THEY'VE BEEN SHUT DOWN.

20 MR. GOLDSER: YEAH. I NOTICED THAT AS WELL. AND I  
21 BELIEVE THAT VERILAW HAS BEEN UP AND RUNNING VERY QUICKLY  
22 THEREAFTER.

23 MR. SIPKINS, ARE YOU FAMILIAR WITH THAT ISSUE? YOU  
24 MAY KNOW IT BETTER THAN I DO.

25 MR. SIPKINS: WELL, WE'VE HAD THE SAME --

1 PETER SIPKINS, YOUR HONOR. GOOD MORNING.

2 WE'VE HAD THE SAME ISSUES THAT THE COURT HAS  
3 RECOGNIZED. IN ADDITION, WE FILED SEVERAL DOCUMENTS, WHICH  
4 WE THOUGHT WERE FULLY LOADED DOCUMENTS, AND WHICH SHOWED UP  
5 IN THE COURTHOUSE AS BLANK PAGES.

6 THE COURT: GREAT.

7 MR. SIPKINS. WE'RE WORKING ON RESOLUTION OF THAT  
8 ISSUE AS WELL. BUT I THINK THAT MR. GOLDSER AND I AGREE THAT  
9 THE SYSTEM IS NOT TOTALLY WITHOUT BUGS, BUT, IN GENERAL, IT'S  
10 OPERATING QUITE WELL.

11 MR. GOLDSER: YOUR HONOR, ANYTHING FURTHER ON THIS  
12 ISSUE?

13 THE COURT: NOT FROM ME.

14 MS. WEBER: YOUR HONOR, I AGREE WITH MR. GOLDSER.

15 WE HAVE BEEN WORKING TOGETHER COOPERATIVELY AND  
16 EFFECTIVELY -- AND THE DOCUMENT PRODUCTION EFFICIENTLY.

17 WE ARE PRIORITIZING PRODUCTION OF WITNESS FILES SO  
18 WE CAN KEEP THE DEPOSITIONS RUNNING ON TRACK. BECAUSE WE ARE  
19 TRYING TO DO THAT VERY CLOSE TO THE DATES OF THE DEPOSITIONS,  
20 THERE'S A LOT OF GIVE AND TAKE BETWEEN THE PARTIES ON THE  
21 DEPOSITION SCHEDULE. THAT SEEMS TO BE WORKING SMOOTHLY SO  
22 FAR. SO, WE ARE VERY PLEASED WITH THAT.

23 BAYER AG DOCUMENT PRODUCTION, WE STARTED THIS  
24 WEEK. WE ARE CATCHING UP. AND RECALL THAT WHEN WE INITIALLY  
25 STARTED DOCUMENT PRODUCTION, WE PRODUCED DOCUMENTS WITHOUT

1 OBJECTIVE CODING.

2 WE STARTED DOING THAT AT THE BEGINNING OF JUNE.

3 AND WE'RE IN THE PROCESS OF CATCHING UP FOR THE FIRST COUPLE

4 OF MONTHS OF DOCUMENT PRODUCTION. AND WE ARE HOPEFUL OF

5 HAVING THAT COMPLETED BY THE END OF THE MONTH OF JULY.

6 AND I THINK, AS RON INDICATED, THE NEXT BIG

7 DISCUSSION WE HAVE TO HAVE IS OVER THE ELECTRONIC SEARCH TERM

8 LIST. WE HAVE EXCHANGED LISTS. AND I THINK WE WILL BE

9 SITTING DOWN TO NEGOTIATE THAT IN THE NEXT COUPLE OF WEEKS.

10 AND WE'LL ALSO BE NEGOTIATING WITH THE STEERING COMMITTEE

11 UNDER THIRD-PARTY SUBPOENAS. THEY'RE STARTING TO GET IN SOME

12 DOCUMENTS. AND WE'LL BE WORKING WITH THEM SO THE DEFENDANTS

13 HAVE ACCESS TO THE SAME DOCUMENTS.

14 THE COURT: THANK YOU.

15 MR. ZIMMERMAN.

16 MR. ZIMMERMAN: I JUST HAVE A BRIEF COMMENT ON

17 VERILAW.

18 I HAVE PERSONALLY FOUND IT TO BE AN EXTRAORDINARY

19 SYSTEM. I HAVE NOT -- I HAVE USED IT IN OTHER CASES, BUT NOT

20 AS EXTENSIVELY BECAUSE, OBVIOUSLY, I'M WATCHING THIS DOCKET

21 WITH GREAT -- WITH GREAT CARE. AND IT'S REALLY

22 EXTRAORDINARY.

23 AND I THINK IT REPRESENTS WHERE EVERYTHING IS GOING

24 TO BE GOING IN OUR PROFESSION. AND IT'S JUST REALLY

25 INTERESTING HOW AN E-MAIL COMES UP ON YOUR SCREEN EVERY TIME

1 SOMETHING GETS FILED. AND THEN YOU CLICK ON TO IT. AND THEN  
2 YOU OPEN THE DOCUMENT. AND YOU CAN EITHER PRINT IT OR READ  
3 IT ONLINE.

4 AND I KNOW THAT PROBABLY A LOT OF PEOPLE HAVE BEEN  
5 DOING THAT IN VARIOUS COURTS FOR SOME TIME, BUT I THINK IT'S  
6 EXTRAORDINARY IN THIS CASE BECAUSE THE VOLUME OF WHAT GETS  
7 FILED AND THE VOLUME OF DOCUMENTS AND ANSWERS AND BRIEFS THAT  
8 GET FILED AND EVEN ORDERS THAT COME OUT.

9 SO, I AM JUST -- I AM JUST VERY PLEASED WITH HOW  
10 WELL VERILAW HAS BEEN WORKING FOR ME AS TRYING TO KEEP  
11 CURRENT ON ANYTHING IN THE CASE WHEREVER I MIGHT BE BECAUSE,  
12 OBVIOUSLY, YOU CAN DO IT REMOTELY OR FROM YOUR DESK.

13 THE COURT: IT'S WORKING WELL FOR THE COURT AND  
14 WITH THE COURT STAFF. SO, I AM SATISFIED WITH IT.

15 MR. ZIMMERMAN: GOOD -- BECAUSE I KNOW WE WENT  
16 THROUGH SOME MACHINATIONS AT THE BEGINNING AS TO SELECTING A  
17 PROPER VENUE.

18 YOUR HONOR, THE NEXT ISSUE IS THE MEDICAL RECORDS  
19 PTO-11 ISSUE, WHICH IS REALLY WHAT WE CALL, "THE WALL ISSUE."  
20 THE WALL ISSUE IS PROCEEDING UNDER THE DIRECTION OF  
21 PROFESSOR -- SPECIAL MAGISTRATE -- SPECIAL MASTER, PROFESSOR  
22 GRADUATIS -- THAT'S A LONG -- THAT'S A LOT OF TITLE.

23 BUT WE ARE NOW AT THE POINT, YOUR HONOR, WHERE THIS  
24 ISSUE IS NOW AT A POINT WHERE WE HAVE TO REALLY LOOK BEHIND  
25 THE ALLEGATIONS AND TAKE SOME DEPOSITIONS -- TAKE SOME

1 DISCOVERY TO DETERMINE IF OUR THEORY OF WHAT WAS GOING ON --  
2 AND I AM NOT GOING TO REITERATE IT HERE TODAY. I THINK MR.  
3 CHESLEY AND OTHERS HAVE MADE THIS VERY CLEAR TO THE COURT.  
4 IF OUR THEORIES OF WHAT WERE GOING ON WITH THESE  
5 MEDICAL RELEASES AND WITH THE MEDICAL RECORDS IS CORRECT, OR  
6 IT IS NOT, WE HAVE MADE SOME ALLEGATIONS. WE NEED TO  
7 DETERMINE IF THOSE ALLEGATIONS ARE FOUNDED IN FACT. WE HAVE,  
8 THEREFORE, NOTICED 30(B)(6) DEPOSITIONS ON THAT ISSUE.  
9 WE NOW HAVE THE WALL UP. AND, NOW, WE HAVE TO LOOK  
10 INSIDE -- ON THE OTHER SIDE OF THE WALL AND SEE WHAT HAS BEEN  
11 HAPPENING NOW THAT THE WALL IS UP -- WHAT WAS HAPPENING  
12 BEFORE THE WALL WAS UP.  
13 WE HAVE BEEN TOLD THAT BAYER OR BUYER --  
14 MS. WEBER: BAYER.  
15 MR. ZIMMERMAN: BAYER.  
16 WHICH ONE IS BAYER? AND WHICH ONE IS BUYER?  
17 BUYER IS --  
18 MS. WEBER: BAYER CORPORATION IS THE U.S. ENTITY.  
19 BUYER A.G. IS THE GERMAN CORPORATION.  
20 MR. ZIMMERMAN: OKAY. THANK YOU.  
21 BAYER ANTICIPATES FILING OBJECTIONS REGARDING THE  
22 SCOPE OF THIS NOTICE OF DEPOSITION. WE ANTICIPATE TRYING TO  
23 WORK THAT OUT IN THE VERY NEAR FUTURE. IF WE DO NOT WORK IT  
24 OUT, IT WILL BE BROUGHT BEFORE THE COURT.  
25 TIME IS SOMEWHAT OF THE ESSENCE, BUT I DON'T KNOW

1 THAT WE WILL BE DOING THAT ON AN EMERGENCY BASIS. IT SEEMS  
2 TO ME WE CAN WORK THAT OUT GENERALLY. AND IF WE DO HAVE A  
3 PROBLEM WITH IT, WE WILL --

4 THE COURT: JUST CALL MY CALENDAR CLERK AND GET A  
5 DATE.

6 MR. ZIMMERMAN: OKAY. BUT WE'RE STILL TRYING TO  
7 NEGOTIATE THAT THROUGH. I HAVE A COMFORT THAT WE WILL MAKE A  
8 GOOD FAITH EFFORT AND PROBABLY WORK IT OUT.

9 THE COURT: I WILL ALERT MY CALENDAR CLERK ABOUT  
10 THIS ISSUE, AND THAT SHE SHOULD GIVE YOU A DATE AS SOON AS  
11 POSSIBLE.

12 MR. ZIMMERMAN: IF WE NEED IT.

13 ANYTHING YOU HAVE ON THE WALL ISSUE?

14 MS. WEBER: SO, YOU ARE AWARE, YOUR HONOR, WE ARE  
15 -- IN TERMS OF DEPOSITION SCHEDULING, WE HAVE BEEN WORKING  
16 WITH THE STEERING COMMITTEE. AND WE ANTICIPATE PRESENTING A  
17 WITNESS ON THIS ISSUE PROBABLY SOMETIME DURING THE MONTH OF  
18 AUGUST. AND THE QUESTION IS GOING TO BE THE SCOPE AND THE  
19 TESTIMONY THERE. AND, SO, WE ARE DONE.

20 THE COURT: THANK YOU.

21 MR. ZIMMERMAN: YEAH. MR. CHESLEY HAS A COMMENT.

22 MR. CHESLEY: YOUR HONOR, JUST A SNIPPET.

23 I WAS THE ONE THAT HAD BEEN WORKING THIS ISSUE.

24 AND I WANT TO THANK THE COURT. I THINK THE COURT

25 AND PROFESSOR HAYDOCK WERE RIGHT, AND I WAS WRONG. I THINK

1 IT WAS A LOGICAL STEP TO HAVE THE WALL. AND, NOW, WE WILL GO  
2 FORWARD AND HOPEFULLY PUT A WINDOW THROUGH THE WALL. AND I  
3 WANTED TO THANK THE COURT.

4 I'D INDICATE TO THE COURT THAT THE ISSUE AND THAT  
5 PERSPECTIVE OF DISCOVERY IS STILL IN ISSUE. AND THEN WHAT --  
6 DEPENDING ON WHAT YOU FIND, THEN, WE'LL COME BACK TO THE  
7 COURT.

8 THANK YOU.

9 THE COURT: THANK YOU.

10 MR. LOCKRIDGE.

11 MR. LOCKRIDGE: YOUR HONOR --

12 THE COURT: GOOD MORNING.

13 MR. LOCKRIDGE: -- ON THE CLASS CERTIFICATION  
14 BRIEFING ISSUE, WE HAD PUT ON A MOTION FOR AN EXTENSION OF  
15 TIME IN WHICH TO FILE OUR RESPONSE. I AM PLEASED THAT  
16 SUBJECT TO THE COURT'S APPROVAL, THE PLAINTIFFS AND THE  
17 DEFENDANTS HAVE COME TO AN UNDERSTANDING.

18 OBVIOUSLY, THE PLAINTIFFS ARE VERY ANXIOUS TO HAVE  
19 OUR CLASS CERTIFICATION BRIEFED -- OUR MOTION HEARD AT AN  
20 EARLY STAGE. NEVERTHELESS, WITH THE ROLLING DOCUMENT  
21 PRODUCTION AND SO FORTH, AND DEPOSITIONS JUST GETTING  
22 STARTED, WE WANTED THE OPPORTUNITY TO PRESENT SOME OF THE  
23 DOCUMENTS AND SOME OF THE DEPOSITIONS TO OUR EXPERTS.  
24 AND THE NEW DATES, WHICH WE WILL BE PROPOSING TO  
25 THE COURT IN A SEPARATE ORDER, PROBABLY LATER ON TODAY OR

1 TOMORROW, WILL BE THAT THE PLAINTIFF SUPPLEMENTAL BRIEF AND  
2 AN EXPERT REPORT WILL BE DUE ON AUGUST 26TH. I BELIEVE THEY  
3 WERE DUE JULY 15TH. SO, THAT'S ABOUT 40 -- 41 DAYS FROM  
4 NOW.

5 THE DEFENDANTS' RESPONSE WILL BE DUE NOVEMBER  
6 26TH. AND THE PLAINTIFFS' REPLY TO THAT RESPONSE WILL BE DUE  
7 ON DECEMBER 23RD.

8 AND I SHOULD SAY WE'RE ACTUALLY GOING TO MAKE AN  
9 EFFORT -- I HAVE TALKED WITH MS. NAST AND MS. CABRASER, WHO  
10 ARE DOING MUCH OF THE WORK ON THESE MATTERS, THAT THE  
11 PLAINTIFFS HAVE ACTUALLY BEEN TRYING TO MOVE THESE DATES UP,  
12 IF AT ALL POSSIBLE, BECAUSE BOTH THE PLAINTIFFS AND  
13 DEFENDANTS ARE ANXIOUS TO GET THIS MATTER ON AND TEED UP.

14 AND I BELIEVE THIS WILL GIVE THE COURT THE  
15 OPPORTUNITY TO HAVE THIS MATTER TEED UP, PERHAPS, IN  
16 JANUARY.

17 AND, THEN, FINALLY, YOUR HONOR, I'D LIKE TO RAISE  
18 ONE FURTHER POINT IN THIS PARTICULAR MATTER. SINCE THE  
19 PROPULSID CASE WAS ADDRESSED IN THE BRIEFING BY BOTH THE  
20 PLAINTIFFS AND DEFENDANTS WHERE JUDGE FALLON AT LEAST DID  
21 GIVE A CONDITIONAL DENIAL TO THE CLASS, HE HAS, SUBSEQUENT TO  
22 THAT DATE, ON THE 27TH OF JUNE, ISSUED AN ORDER THAT I'D LIKE  
23 TO PASS UP TO YOUR HONOR --

24 THE COURT: PLEASE.

25 MR. LOCKRIDGE: -- GRANTING THE PLAINTIFFS' MOTION

1 FOR RECONSIDERATION.

2 I THINK THAT -- SO, I THINK THAT CLASS DECISION IS  
3 NOW ENTIRELY UP IN THE AIR.

4 (PAUSE IN PROCEEDINGS.)

5 MR. LOCKRIDGE: THAT'S ALL FROM THE PLAINTIFFS ON  
6 THAT MATTER.

7 MS. WEBER: YOUR HONOR, AS YOU KNOW FROM OUR  
8 PAPERS, WE DON'T THINK THAT THE MERITS DISCOVERY HAS TO MOVE  
9 FORWARD IN ORDER TO DEAL WITH THE CLASS CERTIFICATION  
10 ISSUES. BUT WE HAVE AGREED ON A BRIEFING SCHEDULE TO GET  
11 THIS FULLY TEED UP DURING -- OR GET THE PAPER DONE DURING  
12 THIS CALENDAR YEAR THAT'S ACCEPTABLE TO DEFENDANTS -- SO,  
13 IMPORTANTLY, TO HAVE THAT LITIGATION MOVE FORWARD.

14 THE COURT: WHY DON'T WE DO THIS. ON TOP OF THAT,  
15 LET'S GET A DATE IN JANUARY FOR ARGUMENT. AND ONCE I GET  
16 BACK TO MINNEAPOLIS, I WILL LOOK AT MY CALENDAR. AND WE'LL  
17 SET A DATE FOR ARGUMENT SO WE HAVE THAT SET IN STONE.

18 MS. WEBER: ONE -- EXCUSE ME.

19 (PAUSE IN PROCEEDINGS.)

20 MS. WEBER: ONE OF THE ISSUES, YOUR HONOR -- AND WE  
21 HAVEN'T SORTED THIS OUT -- IS WHETHER YOU WOULD LIKE US TO  
22 PROCEED STRICTLY ON THE BASIS OF THE PAPERS AND ARGUMENT, OR  
23 WOULD IT BE APPROPRIATE TO HAVE AN EVIDENTIARY HEARING.  
24 AND I DON'T KNOW IF YOUR HONOR HAS ANY PRELIMINARY  
25 VIEWS ON THAT.

1 DO YOU WANT US TO JUST --

2 THE COURT: NO, I DON'T.

3 MS. WEBER: -- OUT A COUPLE OF DAYS. AND THEN --

4 THE COURT: WHAT I WILL DO IS BLOCK OFF SEVERAL  
5 DAYS. AND AS WE GET CLOSER TO THAT DATE, WE CAN MAKE A  
6 DETERMINATION WHETHER OR NOT THERE SHOULD BE A EVIDENTIARY  
7 HEARING.

8 MS. WEBER: WE AGREE WITH THAT APPROACH, YOUR  
9 HONOR.

10 THANK YOU.

11 MR. ZIMMERMAN: YOUR HONOR, THE NEXT ITEM ON THE  
12 AGENDA IS THE WRITTEN DISCOVERY.

13 AS EVERYBODY KNOWS, WE WILL -- WE HAVE SERVED  
14 INTERROGATORIES. AND WE RECENTLY RECEIVED ANSWERS TO  
15 INTERROGATORIES AND ANSWERS TO RESPONSES TO REQUEST FOR  
16 PRODUCTION OF DOCUMENTS.

17 WE BELIEVE THESE REQUESTS WERE NOT COMPLETE OR  
18 ADEQUATE. AND WE'VE ENGAGED IN DISCUSSIONS TO TRY AND  
19 RESOLVE THAT.

20 WE CAN'T -- I CAN'T TELL YOU WHETHER OR NOT THOSE  
21 DISCUSSIONS WILL RESULT IN AGREEMENT, BUT WE ARE ENGAGING IN  
22 THE MEET AND CONFER AND DISCUSSION PROCESS IN GOOD FAITH.

23 SIMILARLY, DEFENDANTS HAVE PRODUCED A PRIVILEGE  
24 LOG. AND WE HAVE CHALLENGED THE LEGAL SUFFICIENCY OF THAT.  
25 AND WE ARE ENGAGED IN NEGOTIATIONS TO RESOLVE BOTH THESE

1 ISSUES.

2 SO, AS A MATTER OF STATUS, THE ANSWERS HAVE BEEN

3 SERVED. THE RESPONSES HAVE BEEN SERVED. THE LOGS HAVE BEEN

4 SERVED. WE DON'T BELIEVE THEY'RE ADEQUATE. OBVIOUSLY,

5 DEFENSE COUNSEL BELIEVES THEY ARE. WE'RE GOING TO MEET AND

6 CONFER. AND IF WE DON'T HAVE RESOLUTION, WE WILL BRING THAT

7 TIMELY BEFORE THE COURT.

8 THE ISSUE, OF COURSE, IS COMPRESSED BY THE FACT

9 THAT WE HAVE 2002 -- A 2003 TRIAL DATE, AS THE COURT TOLD US

10 IN THE INITIAL MEETINGS WE HAD. WE WILL HAVE A TRIAL DATE IN

11 2003. SO, WITH THAT AS OUR DEADLINE, WE ARE VERY ACTIVELY

12 PURSUING ALL THE NECESSARY MEETINGS AND CONFERS. AND ON A

13 RAPID SCHEDULE, WE CAN'T LET MUCH GRASS GROW BECAUSE WE MUST

14 -- AND WE WILL -- BE READY FOR TRIAL IN 2003 ON SOME CASE

15 BEFORE YOUR HONOR IN U.S. DISTRICT COURT IN MINNEAPOLIS.

16 MS. WEBER: PLAINTIFFS RAISED FOR US ON MONDAY FOR

17 THE FIRST TIME THEIR CONCERN THAT THEY HAD SOME OBJECTIONS TO

18 OUR WRITTEN DISCOVERY RESPONSES AND PRIVILEGE LOGS.

19 AT THIS POINT, THE DISCUSSIONS HAVEN'T GONE ANY

20 FARTHER THAN WE KNOW THAT THEY HAVE OBJECTIONS. BUT WE DON'T

21 KNOW WHAT THEY ARE.

22 WE, OF COURSE, ARE HAPPY TO WORK WITH PLAINTIFFS ON

23 THESE ISSUES GOING FORWARD. AND, HOPEFULLY, WE CAN RESOLVE

24 THEM ALL WITHOUT REQUIRING ANY INTERVENTION FROM YOUR HONOR.

25 THE COURT: I'M SURE YOU WILL.

1           THANK YOU.

2           MR. ZIMMERMAN:  RON ADVISES ME THAT WE HAVE THE  
3           SAME ISSUE WITH GLAXO.  AND WE JUST GOT THOSE.  SO, JUST FOR  
4           THE RECORD, WE HAVE THE SAME MEET AND CONFER RESPONSIBILITY  
5           AND THE SAME RESPONSES WITH REGARD TO THAT GLAXO.

6           I WAS AMUSED THAT DICK LOCKRIDGE AND SUSAN WEBER  
7           HAD WORKED OUT THE CLASS CERTIFICATION.  BECAUSE WHEN I LEFT  
8           THE COCKTAIL PARTY, I DIDN'T THINK IT WAS WORKED OUT.  SO,  
9           PERHAPS, IT WAS A BENEFICIARY OF --

10          MS. WEBER:  WE WORKED OUT THE NEXT ONE, TOO.

11          MR. ZIMMERMAN:  HUH?

12          MS. WEBER:  WE WORKED OUT THE NEXT ONE, TOO.

13          MR. ZIMMERMAN:  AT THE COCKTAIL PARTY?

14          MS. WEBER:  NO.

15          MR. ZIMMERMAN:  OH, OKAY.

16          I WAS HOPING THAT THERE WAS SOME BENEFIT TO THAT  
17          COCKTAIL PARTY.  AND WE COULD ALL WRITE THAT OFF AS BEING  
18          BUSINESS RELATED, BUT -- I AM BEING FACETIOUS.

19          BUT MY HOPE WAS THAT AT THE COCKTAIL PARTY, WE WILL  
20          RESOLVE SOME OF THE LESS CONTENTION ISSUES AS WE -- AS WE --

21          MS. NAST:  YOUR HONOR, MAY I INTERRUPT FOR A  
22          SECOND.

23          I THINK IT'S FAIR TO SAY THAT WE AGREED TO RESOLVE  
24          THE CLASS ACTION BRIEFING SCHEDULE AT THE COCKTAIL PARTY.  
25          AND THE RESOLUTION OF IT --

1 MR. ZIMMERMAN: OKAY. WELL, THAT'S GOOD, THEN. I  
2 FEEL BETTER ABOUT THAT.

3 THE COURT: WELL, IT'S UNFORTUNATE THAT MR. SHERMAN  
4 DIDN'T SHOW UP AT THE COCKTAIL PARTY.

5 MR. ZIMMERMAN: WE COULD HAVE GOT A LOT RESOLVED  
6 THEN. I THOUGHT HE WAS GOING TO BE THERE.

7 THE COURT: AT LEAST, MR. LOPEZ TOLD ME HE WASN'T  
8 GOING TO SHOW UP.

9 MR. SHERMAN. YOUR HONOR, I HAD INTENDED TO  
10 APOLOGIZE IN COURT THIS MORNING. BUT AS USUAL, THE COURT IS  
11 VERY OBSERVANT. AND I REGRET THAT I COULDN'T MAKE IT. AND I  
12 AM HERE TODAY WITH A GOOD SMILE, AS THE COURT DOES THE SAME,  
13 YOUR HONOR.

14 MR. ZIMMERMAN: AND WE'RE GLAD TO SEE YOU, ARTHUR  
15 --

16 MR. SHERMAN: THANK YOU.

17 MR. ZIMMERMAN: -- RAMON.

18 THE PLAINTIFF FACT SHEET MOTION, HAS THAT ALL --  
19 THAT HAS NOW BEEN RESOLVED.

20 MS. WEBER: AS OF NOW.

21 MR. ZIMMERMAN: AH, UNBELIEVABLE.

22 MS. WEBER: IN OUR ONGOING SPIRIT OF GOODWILL, SO  
23 YOU ARE AWARE, YOUR HONOR, WE HAD SOME CONCERNS ABOUT GETTING  
24 FIRST ROUND OF DISCOVERY ON THE PUNITIVE CLASS  
25 REPRESENTATIVES IN THE HARTMAN CASE, THE MASTER CLASS ACTION

1 COMPLAINT.

2 AS WE CAME INTO THE PROCEEDINGS YESTERDAY, THERE

3 WERE OUTSTANDING ISSUES RELATING TO SEVERAL OF THE

4 PLAINTIFFS. ONE OF THEM, PLAINTIFF, GRAFFEO, WE ACTUALLY

5 RECEIVED A MOTION THIS MORNING INDICATING THAT PLAINTIFFS

6 WANT TO SUBSTITUTE SOMEONE FOR THAT PLAINTIFF. BUT THE

7 MOTION DOESN'T INDICATE WHO IT IS GOING TO BE.

8 PLAINTIFFS HAVE AGREED THAT BY A WEEK FROM

9 TOMORROW, THEY WILL PROVIDE US WITH INFORMATION ON A PROPOSED

10 SUBSTITUTE CLASS REPRESENTATIVE, INCLUDING PLAINTIFF BABSHEE.

11 AND WE WILL BE ABLE TO RESPOND IN DUE COURSE WITH THAT

12 INFORMATION.

13 WE WERE MISSING ADEQUATE AUTHORIZATIONS ON

14 PLAINTIFFS -- ON DARDAR, WHICH IS NOT PROPERLY DATED. WE

15 WORKED OUT A RESOLUTION OF THAT ISSUE. PLAINTIFF SWEARINGEN

16 -- AND I HOPE I AM NOT SLAUGHTERING THAT NAME -- WHO HAD

17 CHECKED OFF AN EMOTIONAL DISTRESS CLAIM -- THAT HAD RESISTED

18 PROVIDING AUTHORIZATION FOR PSYCHIATRIC RECORDS. AND WE'RE

19 GOING TO GET A STIPULATION FROM THEM INDICATING THAT THEY ARE

20 NOT ASSERTING A CLAIM FOR ANY SORT OF EMOTIONAL OR

21 PSYCHIATRIC INJURY BEYOND, YOU KNOW, PAIN AND SUFFERING THAT

22 WOULD BE IN CONNECTION WITH THE PHYSICAL INJURY CLAIM. SO,

23 THAT WILL ADDRESS OUR CONCERN ON THAT REGARD.

24 WE HAD -- WE'RE MISSING DOCUMENTS ON THREE OF THE

25 PLAINTIFFS. I'M TOLD THAT TWO OF THEM MAY ACTUALLY BE IN MY

1 OFFICE AT THIS POINT IN TIME. MY PLAN IS TO WORK ON THE  
2 THIRD. SO, BASED ON THAT, I THINK WE HAVE THIS ONE SORTED  
3 OUT.

4 THE COURT: ALL RIGHT.

5 MS. CABRASER: YOUR HONOR, ELIZABETH CABRASER FOR  
6 PLAINTIFFS.

7 MS. WEBER IS CORRECT. I THINK EVERYTHING THAT WAS  
8 ON THE DISPUTED DOCKET TO BE RESOLVED HAS BEEN RESOLVED BY  
9 PROVIDING THE INFORMATION OF HAVING A VERY SHORT SCHEDULE FOR  
10 GETTING THAT PROVIDED. I DON'T THINK WE'LL HAVE ANY MORE  
11 DISPUTES IN THAT ARENA.

12 THE COURT: THANK YOU.

13 MR. LOCKRIDGE: WELL, FOR A MOTION THAT'S BEEN  
14 RESOLVED, I HATE TO ADD ANYTHING MORE, AND I REALLY WON'T.  
15 BUT I DO WANT TO MAKE IT VERY CLEAR THAT THE  
16 PLAINTIFF HAS BEEN PROCEEDING FORWARD IN A VERY GOOD FAITH  
17 EFFORT TO COMPLY WITH ALL THE PLAINTIFFS' FACT SHEETS. AND I  
18 THINK THAT THE DEFENDANTS HAVE BEEN A LITTLE PICKY, IF YOU  
19 WILL, BUT ALSO UNDERSTANDING. AND THERE MAY BE MORE ISSUES  
20 COMING UP LATER ON. I KNOW THAT THE ALLEN MOTION WAS FILED  
21 AT ONE TIME.

22 I DON'T KNOW IF YOUR HONOR IS GOING TO WANT TO  
23 CONSIDER HAVING THESE MATTERS HEARD BEFORE MAGISTRATE JUDGE  
24 LEBEDOFF.

25 THE COURT: WELL, BEFORE I SEND THEM TO THE

1 MAGISTRATE, I WOULD WANT TO GIVE DIRECTION AND HAVE THEM  
2 BEFORE ME. AND I DON'T THINK YOU WANT TO BRING THOSE TYPES  
3 OF MATTERS TO ME. AND, SO, THAT MEANS YOU'D MEET AND CONFER  
4 AND RESOLVE THOSE ISSUES. IF YOU COME BEFORE ME, THERE'S  
5 GOING TO BE SANCTIONS BECAUSE I DON'T WANT A NUMBER OF  
6 MOTIONS BEING MADE TO THE MAGISTRATE SO THAT YOU CAN GET IN A  
7 PATTERN OF EVERY TIME THAT YOU HAVE A DISAGREEMENT, THAT YOU  
8 ARE RUNNING TO THE MAGISTRATE.

9 WELL, FIRST YOU'RE GOING TO COME TO ME. AND I  
10 DON'T THINK YOU WANT TO COME WITH ME WITH THESE ISSUES IF  
11 THEY CAN BE RESOLVED.

12 MR. LOCKRIDGE: WELL, YOU ARE ABSOLUTELY RIGHT. WE  
13 CERTAINLY DON'T WANT TO. I DON'T KNOW IF THE DEFENDANTS DO  
14 OR NOT. BUT SOME OF THEM, FOR EXAMPLE, A MATTER OF A DATE,  
15 WAS EXTRAORDINARILY MINOR. AND MS. SWEARINGEN WAS AN 80-YEAR  
16 OLD WOMAN WHO HAS ABSOLUTELY NO PSYCHOLOGICAL RECORDS.  
17 SIMPLY, SHE HAD ALREADY -- SHE DID EXECUTE A BROAD BASE.

18 THE COURT: WE CAN --

19 MR. LOCKRIDGE: ALL RIGHT.

20 THE COURT: -- AT SOME OTHER POINT. BUT I THINK  
21 YOU UNDERSTAND MY POINT.

22 MR. LOCKRIDGE: THANK YOU VERY MUCH, YOUR HONOR.

23 MR. ZIMMERMAN: AGAIN, WAS THAT RESOLVED AT THE  
24 COCKTAIL PARTY.

25 MS. WEBER: WE AGREED TO WORK OUT A RESOLUTION THIS

1 MORNING.

2 THE COURT: WHILE WE WERE WAITING FOR YOU.

3 MR. ZIMMERMAN: TOUCHE.

4 MR. SIPKINS: TOUCHE.

5 MR. CHESLEY: CAN I GET A COPY OF THAT PART OF THE  
6 TRANSCRIPT.

7 MR. ZIMMERMAN: IT'S ALL RIGHT IF STAN GETS A COPY,  
8 BUT DON'T SEND A COPY TO MY WIFE.

9 THE THIRD-PARTY PAYOR CASES, YOUR HONOR, THIS IS A  
10 NEW KIND OF MATTER. I WANT TO GIVE THE COURT A LITTLE BIT OF  
11 BACKGROUND ON WHAT IS OCCURRING.

12 IN THE PHILADELPHIA LITIGATION -- AND I'M NOT SURE  
13 OF THE DATE OF THE FILING. BUT AWHILE BACK IN THE  
14 PHILADELPHIA PROCEEDINGS, A THIRD-PARTY PAYOR CASE OR CASES  
15 WERE FILED. AND THEY WERE PROCEEDING AT SOME PACE WITHIN THE  
16 PHILADELPHIA PROCEEDINGS. AND THIS IS BASICALLY CLAIMS ON  
17 BEHALF OF THIRD-PARTY PAYERS AGAINST BAYER AND BUYER.

18 AND MR. STEVE SCHWARTZ IS IN THE COURTROOM. HE IS  
19 ONE OF THE LEAD COUNSELS --

20 MR. SCHWARTZ: GOOD MORNING, YOUR HONOR.

21 MR. ZIMMERMAN: -- IN THE PHILADELPHIA THIRD-PARTY  
22 PAYOR COMPLAINT.

23 THE COURT: WELCOME.

24 MR. ZIMMERMAN: AND STEVE IS WORKING WITH A NUMBER  
25 OF OTHER LAWYERS AROUND THE COUNTRY WHO I HAPPEN TO HAVE MET

1 WITH ON THESE ISSUES MAYBE TWO MONTHS AGO IN CHICAGO TO  
2 DETERMINE WHETHER OR NOT THERE WAS SOME WAY WE COULD WORK  
3 TOGETHER ON COORDINATED DISCOVERY AND COORDINATED EFFORTS IN  
4 THESE THIRD-PARTY PAYOR CLAIMS.

5 THE PSC HAD REVIEWED THE THIRD-PARTY PAYOR ISSUES  
6 AND HAD MADE A DECISION THAT IT WASN'T APPROPRIATE AT THIS  
7 TIME FOR THE PSC IN THEIR MASTER AMENDED CONSOLIDATED CLASS  
8 ACTION COMPLAINT OR OTHER COMPLAINTS TO BRING A THIRD-PARTY  
9 PAYOR CLAIM AT THAT TIME.

10 WE DECIDED -- WE DECIDED THAT WE WOULD SEE WHAT  
11 OTHER COUNSEL STEPPED FORWARD WITH THOSE CLAIMS BECAUSE OF A  
12 POTENTIAL ISSUE HAVING TO DO WITH POSSIBLE CONFLICT OF  
13 INTEREST. I'M NOT SAYING THERE WAS ONE, BUT WE THOUGHT THE  
14 POTENTIALITY WAS THERE. WE DEFERRED BRINGING IT AS THE  
15 PLAINTIFF STEERING COMMITTEE. THEN, WE TALKED TO THE  
16 PENNSYLVANIA COUNSEL.

17 LATER -- I THINK SOMETIME IN JUNE, JUNE 8TH, JOE  
18 ARSHAWSKY BROUGHT A CLAIM. AND JOE ARSHAWSKY IS HERE --  
19 MR. ARSHAWSKY: GOOD MORNING, YOUR HONOR.

20 THE COURT: GOOD MORNING.

21 MR. ZIMMERMAN: -- FROM THE PROVOST UMPHREY FIRM IN  
22 BEAUMONT, TEXAS AND -- AMONG OTHER PLACES, ALBUQUERQUE, NEW  
23 MEXICO, WHERE JOE RESIDES.

24 AND MR. ARSHAWSKY BROUGHT A THIRD-PARTY PAYOR CLAIM  
25 IN THE MDL. IN OTHER WORDS, IN FEDERAL COURT VENUE IN U.S.

1 DISTRICT COURT OF MINNESOTA.

2 I ALSO MET RECENTLY WITH MR. ARSHAWSKY, BOTH  
3 ACTUALLY, STEVE SCHWARTZ AND JOE ARSHAWSKY, I KNOW QUITE WELL  
4 FROM OTHER MATTERS. SO, WE HAVE HAD A WORKING RELATIONSHIP  
5 OVER THE YEARS. AND I HAVE CONSIDERED MYSELF ON GOOD TERMS  
6 WITH THEM. AND WE MET TO TALK.

7 THE RESULT OF THAT, YOUR HONOR, IS AGREEMENT ON  
8 ALMOST EVERYTHING THAT THEY -- THAT WE -- HOW WE SEE THE CASE  
9 BETWEEN PLAINTIFFS.

10 WE BELIEVE THAT MR. ARSHAWSKY'S CLAIM WILL BE  
11 WITHIN THE MDL, AND, OBVIOUSLY, THE COORDINATED AND  
12 CONSOLIDATED AND WORKED THROUGH WITH THE MDL THROUGH THE  
13 PLAINTIFF STEERING COMMITTEE.

14 WE THINK, PERHAPS, THAT MR. ARSHAWSKY SHOULD BE  
15 APPOINTED TO A SUBCOMMITTEE OF THE PSC OR A SUBCOMMITTEE  
16 WHERE HE WILL BE IN CHARGE OF OR BE RESPONSIBLE FOR ALLOWING  
17 THE MEMBERS OF THE PSC AND UNDER THE DIRECTION OF THE  
18 EXECUTIVE COMMITTEE AND OF THE PSC TO HANDLE THE THIRD-PARTY  
19 PAYOR ISSUES AS THEY OCCUR, IF THEY ARE DIFFERENT THAN THE  
20 OTHER ISSUE.

21 AND WE HAVE REACHED ALMOST AGREEMENT WITH MR.  
22 SCHWARTZ AND HIS GROUP WITH REGARD TO THEIR LIAISON ROLE  
23 BETWEEN PHILADELPHIA ON THE THIRD-PARTY PAYOR CLAIMS AND THE  
24 MDL. THERE IS A DIFFERENCE. IT HAS TO DO WITH ASSESSMENT.  
25 I'VE BEEN SPEAKING WITH MR. SCHWARTZ ABOUT THAT. AND WE HAVE

1           AGREED TO CONTINUE OUR DISCUSSIONS.  
2  
3           SO, THAT'S WHERE THIS IS. I HAVE HAD DISCUSSIONS  
4           WITH ADAM HOEFLICH ON THIS. I DON'T BELIEVE SUSAN AND I OR  
5           ANY OF THE OTHER COUNSEL HAVE DISCUSSED IT. BUT I DID SPEAK  
6           WITH ADAM ABOUT IT. IT WAS BECAUSE I THOUGHT HE WAS GOING TO  
7           BE HERE. AND I UNDERSTAND HE HAS HAD A FAMILY ISSUE -- WITH  
8           REGARD TO WHAT IS OCCURRING. AND THIS HAS ALL BASICALLY  
9           OCCURRED IN THE LAST SEVERAL DAYS.  
10          BUT MR. ARSHAWSKY AND MR. SCHWARTZ ARE HERE. I  
11          BELIEVE THEY HAVE A MOTION PENDING FOR SOME FORMAL  
12          APPOINTMENTS OF SOME KIND.  
13          THE PSC HAS NOT TAKEN A FORMAL POSITION ON IT  
14          BECAUSE THE PAPERS WERE JUST FILED. BUT IF THE COURT WANTS  
15          TO HEAR FROM THEM NOW --  
16          THE COURT: I HAVE ASKED THEM TO COME. AND I WOULD  
17          LIKE TO HEAR FROM THEM.  
18          MR. ZIMMERMAN: OKAY. AND I BELIEVE I HAVE  
19          REPRESENTED EVERYTHING CORRECTLY. IF I HAVE NOT, I KNOW  
20          THESE GENTLEMEN WILL CORRECT ME.  
21          MR. ARSHAWSKY: GOOD MORNING, YOUR HONOR.  
22          THE COURT: GOOD MORNING.  
23          MR. ARSHAWSKY: JOSEPH ARSHAWSKY FROM PROVOST  
24          UMPHREY, LLP. WE REPRESENT THE PLAINTIFF ALLIED SERVICES  
25          DIVISION AND WELFARE FUND, WHICH IS THE UNION WELFARE FUND  
            AND THIRD-PARTY PAYER, THAT BROUGHT CLAIMS PRIMARILY ON

1 ECONOMIC ISSUES AS OPPOSED TO THE PERSONAL INJURY ISSUES.  
2 BUT IT DOVETAILS WELL WITH THE ECONOMIC CLASS THAT'S BEING  
3 SOUGHT AS A REFUND CLASS BY THE PLAINTIFFS' COMMITTEE.  
4 WE FILED A MOTION ALONG WITH OUR COMPLAINT ON JUNE  
5 10TH FOR APPOINTMENT AS LEAD COUNSEL FOR THIRD-PARTY PAYERS,  
6 RECOGNIZING THAT THERE ARE SOME DISTINCT INTERESTS BETWEEN  
7 THIRD-PARTY PAYERS AND CONSUMERS -- NOT NECESSARILY  
8 CONFLICTING, BUT DISTINCT. AND THEN THERE IS ALSO A COMBINED  
9 INTEREST.

10 AND IT'S OUR INTEREST IN WORKING WITH THE EXISTING  
11 LEADERSHIP STRUCTURE IN A MANNER THAT IS COMFORTABLE FOR  
12 EVERYONE, SO THAT WHETHER IT'S DESIGNATED AS A SUBCOMMITTEE  
13 OF THE PSC, OF WHICH WE ARE RESPONSIBLE FOR THIRD-PARTY  
14 PAYERS WITHIN THAT GROUP, OR AS A SEPARATE PARALLEL ENTITY TO  
15 THE PSC, WE WOULD INTEND TO WORK FULLY WITH THEM, YOUR  
16 HONOR.

17 THE COURT: THANK YOU.

18 MR. CHESLEY: I THINK, YOUR HONOR, AT MR.

19 ZIMMERMAN'S REQUEST, HE HAS ASKED ME TO JUST ADD ONE POINT.

20 THE COURT: YOU MAY.

21 MR. CHESLEY: THE REASON IT WOULD APPEAR THAT THERE  
22 COULD BE, IT LOOKS LIKE, THAT THERE COULD BE FOOT DRAGGING IS  
23 THAT WE ARE ENTERING, I BELIEVE, A NEW -- I MEAN, I LIKEN IT  
24 TO THE VERILAW ISSUE, YOUR HONOR.

25 THE PAST HISTORY WAS PLAINTIFFS FOUGHT DEFENDANTS.

1 SETTLED OR TRIED CASES. AND THEN THOUGHT THAT -- AND THEN  
2 FOUGHT THE THIRD-PARTY PAYOR AND ENDED UP INTO A THIRD SET OF  
3 BATTLES.

4 THE NEW TREND, HOPEFULLY, IS THERE'S A RECOGNITION  
5 THAT THE THIRD-PARTY PAYERS DO HAVE RIGHTS. SO, THAT'S A  
6 GREAT ADMISSION. SOMETHING THAT HAS NOT HAPPENED IN A LONG,  
7 LONG TIME.

8 WE HAVE BEEN MOVING EVOLUTIONARILY TOWARDS THAT.

9 THE LAST ONE WE DID WAS IN SULZER. OUR INTENTION IS TO PUT  
10 IT OUT THERE AND MAKE IT AN ISSUE SO THAT IF AND WHEN WE  
11 RESOLVE WITH THE DEFENDANTS, EITHER BY SETTLEMENT OR TRIAL,  
12 THERE WILL BE A PROCESS TO HANDLE THE THIRD-PARTY CLAIMANTS.

13 WHAT COMPLICATES THE ISSUE, YOUR HONOR, IS THAT

14 SINCE WE DO HAVE A DRUG THAT WAS USED BY MAYBE AN OLDER  
15 POPULATION, WE MAY HAVE HICKVA PROBLEMS, WHICH IS MEDICARE --  
16 MEDICARE AND MEDICAID, BUT, PRIMARILY, MEDICARE.

17 THEY USUALLY DON'T PLAY AS WELL IN THE SANDBOX AS

18 THE PRIVATE INSURERS. WE WANT TO WORK WITH THE PRIVATE  
19 INSURERS AS WE DID IN SULZER. AND THIS IS A NEW TREND AND A  
20 MOVEMENT IN THE RIGHT DIRECTION SO THAT IT GIVES AN ABILITY  
21 OF THE DEFENDANT TO GET A PIECE OF MIND AS WELL. BECAUSE  
22 MANY OF THESE PRIVATE INSURER CONTRACTS, AND, PARTICULARLY,  
23 HICKVA -- HICKVA HAS THE RIGHT TO FOLLOW THE MONEY WHEREVER  
24 THEY WISH, INCLUDING PLAINTIFFS' LAWYERS, DEFENDANTS'  
25 WHEREVER THE -- AND CLAIMANTS.

1 SO, WHAT A DEFENDANT WANTS AT THE END OF THE DAY,  
2 WHETHER BY EITHER TRIAL OR SETTLEMENT, IS TOTAL RESOLUTION.  
3 AND IN THE PAST HISTORY, WE HAVE MADE A MISTAKE BECAUSE WE  
4 HAVE CREATED AN IMPEDIMENT TO FINAL RESOLUTION OF CASES BY  
5 DELAYING THE INEVITABLE AND PUTTING OUR HEAD IN THE SAND.  
6 WHAT WE WANT TO DO IS WE WANT TO WORK -- AND I  
7 THINK IT'S VERY IMPORTANT THAT THESE TWO GENTLEMEN ARE HERE  
8 TODAY BECAUSE THAT SHOWS THAT WE -- WE DO WANT TO WORK. AND  
9 WE WANT TO WORK ON A NATIONAL BASIS. WORKING IT OUT IN  
10 PENNSYLVANIA OR IN CALIFORNIA DOESN'T RESOLVE THESE INSURANCE  
11 COMPANIES THAT HAD CLAIMS IN INDIANA.  
12 SO, WE WANT TO WORK TOWARDS IT, BUT WE WANT TO GO A  
13 LITTLE SLOWLY. AND WE MAY COME TO THE COURT FOR SOME  
14 GUIDANCE AND ADVICE BECAUSE, CANDIDLY, WE WANT TO MAKE SURE  
15 THAT WE'RE NOT HAVING CONFLICTS. AND IT GOES LIKE THIS.  
16 IF WE MAKE IT TOO EASY FOR THE PAYER, OUR CLAIMANTS  
17 CAN SAY, WELL, WAIT A MINUTE. YOU KNOW, WHY ARE YOU HELPING  
18 THE PAYOR COME AND TAKE SOME MONEY BACK FROM ME. SO, THESE  
19 ARE SOME TOUCHY ISSUES THAT WE HAVE TO WORK TOWARDS SO THAT  
20 WE DON'T IMPACT -- AND WHILE WE DON'T HAVE A CLASS, THERE ARE  
21 CLASS ACTIONS PENDING. SO, THERE IS A PUTATIVE CLASS. AND  
22 IF WE DON'T HAVE A CLASS, WE STILL HAVE CLAIMANTS WE ARE  
23 REPRESENTING. AND WE HAVE A, YOU KNOW, A -- FRANKLY, IT'S  
24 NOT A BRIGHT LINE IN THE -- IN THE SUN. THERE'S NOT A BRIGHT  
25 LINE AS TO THE RIGHT WAY TO GO. AND THAT'S WHY WE ARE

1 WORKING OUR WAY THROUGH IT.

2 AND I'M SORRY IN TAKING THIS MUCH TIME. BUT I

3 THINK THAT'S A LOGICAL EXPLANATION AS TO WHERE WE ARE GOING

4 AND WHAT WE WOULD LIKE TO DO.

5 THE COURT: ALL RIGHT.

6 MR. SCHWARTZ.

MR. SCHWARTZ: THANK YOU, YOUR HONOR.

8 AS MR. ZIMMERMAN MENTIONED, I REPRESENT SEVERAL

9 LARGE UNIONS BASED IN PHILADELPHIA AND PENNSYLVANIA WHO HAVE

10 BEEN PROSECUTING SINCE THE SUMMER OF 2001 THE THIRD-PARTY

11 PAYOR CLAIMS. THEY WERE FILED AS NATIONAL CLASS ACTIONS IN

12 THE PHILADELPHIA COMMERCE COURT.

13 MR. ARSHAWSKY FILED A CASE IN THIS MDL PROCEEDING.

14 AND WE SUPPORT HIS EFFORTS TO BECOME APPOINTED EITHER LEAD

15 COUNSEL FOR THIRD-PARTY PAYORS, OR IF IT'S GOING TO BE A

16 UBCOMMITTEE, THAT CAN BE WORKED OUT IN THIS MDL.

17 BECAUSE WE ARE INVOLVED IN THE PENNSYLVANIA

18 LITIGATION, BECAUSE WE AGREE THAT SOME DEGREE OF COORDINATION

19 IS APPROPRIATE AS EXPRESSED BY YOUR HONOR IN THE NEW ORLEANS

20 CONFERENCE, FOR EXAMPLE.

21 WE'VE HAD DISCUSSIONS WITH MR. ZIMMERMAN AND WITH

22 MR. ARSHAWSKY. AND WHAT WE PROPOSE IS THAT MY GROUP BE

23 APPOINTED A LIAISON BETWEEN THE PENNSYLVANIA THIRD-PARTY

24 PAYORS AND THE MDL THIRD-PARTY PAYORS SO WE CAN AS BEST WE

25 CAN COORDINATE THE LITIGATION SO WE CAN ACHIEVE ALL OF THE

1 ECONOMIES AND AVOID THE INCONVENIENCE IN JUDICIAL ECONOMY TO  
2 THE EXTENT IT'S POSSIBLE. AND WE THINK THAT APPOINTMENT WILL  
3 GO A LONG WAY IN ADVANCING THOSE GOALS.

4 THE ONE ISSUE THAT WE HAVEN'T FULLY WORKED OUT, AND  
5 I THINK THAT'S SOMETHING WE'LL JUST CONTINUE TO TRY TO WORK  
6 OUT. AND IF WE CAN'T, WE'LL BRING IT BACK TO THE COURT -- IS  
7 HOW WE DEAL WITH THE ASSESSMENT ISSUE. AND, HOPEFULLY, WE'LL  
8 RESOLVE IT AMONGST OURSELVES. AND THE COURT WILL FIND THAT  
9 RESOLUTION ACCEPTABLE.

10 THE COURT: MR. ZIMMERMAN, CAN I HAVE A PROPOSED  
11 ORDER ON MY DESK IN TWO WEEKS DEALING WITH THIS ISSUE.

12 MR. ZIMMERMAN: YES, SIR.

13 THE COURT: AND WE WILL BE IN PHILADELPHIA IN  
14 SEPTEMBER, SO.

15 MR. SCHWARTZ: I LOOK FORWARD TO YOUR HONOR  
16 COMING. AND IF THERE IS ANYTHING I CAN DO TO FACILITATE THAT  
17 TRIP, I'LL BE MORE THAN HAPPY TO.

18 THE COURT: IF YOU CAN TOP CALIFORNIA, THAT WOULD  
19 BE HELPFUL.

20 MR. SIPKINS: MAY I BE HEARD ON THIS ISSUE, YOUR  
21 HONOR?

22 THE COURT: YOU MAY.

23 MR. CHESLEY: -- TOPPING CALIFORNIA --

24 MR. SCHWARTZ: I'LL GET FULL DETAILS OF THE  
25 COCKTAIL PARTY. I'LL SEE WHAT I CAN DO.

1 MR. SIPKINS: THANK YOU, YOUR HONOR.  
2 PETER SIPKINS ADDRESSING THIS ISSUE ON BEHALF OF  
3 THE DEFENDANTS.  
4 YOUR HONOR, UNTIL THIS MORNING, I THOUGHT THAT THIS  
5 ISSUE WAS GOING TO BE A NONISSUE. THE JOINT REPORT WAS FILED  
6 ON TUESDAY WITH YOU -- REPORTS THAT IT'S PREMATURE FOR THE  
7 PARTIES TO TAKE POSITIONS ON THESE LAWSUITS. AND ON THIS  
8 PARTICULAR ASPECT OF THE AGENDA, I HAD HEARD NOTHING  
9 DIFFERENT THAN THAT FROM THE PLAINTIFFS. SO, I ASSUMED THIS  
10 WOULD NOT BE IN ISSUE.  
11 BUT, IN FACT, THE DEFENDANTS, I THINK, ARE TAKING A  
12 POSITION SOMEWHAT DIFFERENT FROM THAT ADVANCED BY THE PARTIES  
13 YOU'VE HEARD FROM ALREADY THIS MORNING.  
14 AND THE REASON I AM TAKING A DIFFERENT POSITION IS  
15 AS FOLLOWS: WE THINK NOT ONLY ARE THE MOTIONS NOT TIMELY AND  
16 RIPE FOR DECISION YET SINCE THE MOTION BY MR. SCHWARTZ WAS  
17 ONLY FILED ON TUESDAY, BUT BECAUSE THE CLAIMS OF MR.  
18 ARSHAWSKY AND MR. SCHWARTZ REPRESENT ONLY THE TIP OF THE  
19 ICEBERG. AND WE THINK IT WOULD BE INAPPROPRIATE FOR THE  
20 COURT TO APPOINT LEAD COUNSEL ON BEHALF OF THE THIRD-PARTY  
21 PAYOR CLAIMANTS UNTIL THE COURT HAS GIVEN ADEQUATE NOTICE FOR  
22 OTHER PARTIES TO JOIN AND BE HEARD WHO HAVE SIMILAR CLAIMS.  
23 FOR EXAMPLE, YOUR HONOR, MAJOR INSURANCE COMPANIES,  
24 LIKE BLUE CROSS, BLUE SHIELD, AETNA, AND OTHERS ARE PURSUING  
25 THIRD-PARTY CLAIMS AGAINST BAYER -- THIRD-PARTY CLAIMS

1 ESSENTIALLY RELATED TO THE COST OF THE MEDICATION.  
2 AND, THEREFORE, WE WOULD -- WE WOULD BE SOLVING A  
3 MINOR PROBLEM, I THINK, WITHOUT ATTEMPTING TO DENIGRATE  
4 EITHER THE CLAIMS OF MR. SCHWARTZ OR MR. ARSHAWSKY, AND LEAVE  
5 A NUMBER OF PEOPLE OUTSIDE THE TENT. AND I THINK THE COURT  
6 WOULD PREFER TO HAVE EVERYBODY INSIDE -- INSIDE THE TENT.  
7 AND, THEREFORE, I'D SUGGEST THAT RATHER THAN DECIDE  
8 THE ISSUE TODAY OR TWO WEEKS FROM NOW, THAT IT MIGHT BE MORE  
9 APPROPRIATE TO HAVE THIS ISSUE FULLY DECIDED AND BRIEFED AND  
10 DECIDED IN A PHILADELPHIA HEARING IN SEPTEMBER.  
11 THE COURT: MR. SCHWARTZ.  
12 MR. CHESLEY: YOUR HONOR --  
13 MR. SCHWARTZ: IF I MAY JUST BE HEARD BRIEFLY ON  
14 THE ISSUE THAT WAS BROUGHT UP.  
15 WE FILED OUR CASE IN SEPTEMBER OF 2001. THE  
16 PENNSYLVANIA COURT DID APPOINT US AS LEAD COUNSEL IN  
17 PENNSYLVANIA.  
18 THIS LITIGATION IS WELL-KNOWN TO EVERYONE. AND I  
19 THINK THERE COMES A POINT IN TIME WHEN PEOPLE WHO WANT TO  
20 PARTICIPATE HAVE TO START PARTICIPATING. SO, I JUST DON'T  
21 WANT ANY LONG DELAY FOR PEOPLE WHO MAY DECIDE TO COME IN  
22 BECAUSE THEY THINK THEY MAY WANT TO DO SOMETHING.  
23 THE BLUES AND ALL THE OTHERS, SUCH AS AETNA, THEY  
24 ALL KNOW ABOUT THIS LITIGATION. AND IF THEY WANTED TO COME  
25 IN, I THINK THEY WOULD HAVE BEEN IN THIS LITIGATION ALREADY.

1 AND IF YOUR HONOR IS GOING TO HAVE DELAY ON THIS  
2 ISSUE, WE WOULD JUST LIKE TO HAVE SOME TIMEFRAME SO WE CAN  
3 GET OUR APPOINTMENT WHERE THERE IS NOT SOME OPEN-ENDED TIME  
4 TO GET THIS ISSUE RESOLVED.

5 THE COURT: WHAT HAPPENED IN PHILADELPHIA? DID  
6 BLUE CROSS/BLUE SHIELD COME IN THERE? OR AETNA? OR ANY OF  
7 THE OTHERS?

8 MR. SCHWARTZ: NO. TO MY KNOWLEDGE, BESIDES MY  
9 CASES AND MR. ARSHAWSKY'S CASE, I DON'T BELIEVE THERE IS  
10 ANOTHER THIRD-PARTY PAYOR CASE THAT'S BEEN FILED SEEKING  
11 CLASS STATUS ANYWHERE IN THE COUNTRY. IF I AM WRONG ABOUT  
12 THAT, SOMEONE WILL TELL ME.

13 AND THE BLUES DID NOT COME INTO THE PENNSYLVANIA  
14 LITIGATION SEEKING CLASS STATUS ON THE THIRD-PARTY PAYOR END  
15 OR ANY OTHER END, TO MY KNOWLEDGE.

16 MR. CHESLEY: YOUR HONOR, IF I MAY BE HEARD FOR A  
17 MOMENT.

18 SELDOM DO YOU HEAR ME STRADDLE A FENCE. THAT'S  
19 SOMETHING I'VE GOT TO LEARN TO DO SOMETIME.

20 I HAPPEN TO AGREE WITH BOTH MR. SIPKIN AND MR.  
21 SCHWARTZ. AND I HAVE HEARD FROM COUNSEL FROM AETNA IN  
22 CLEVELAND. THE PROBLEM THAT MR. SIPKIN IS RAISING IS A  
23 CONCERN THAT I MENTIONED TO MR. SCHWARTZ ON THE PHONE. AND I  
24 JUST WANT TO ELUCIDATE ON IT.

25 THERE ARE TWO KINDS OF THIRD-PARTY PAYMENT. THE

1 ONE THAT MR. SCHWARTZ HAS IS REALLY THE SMALLEST OF THE PIECE  
2 OF THE PUZZLE. AND THAT'S THE COST OF THE DRUG.  
3 WE HAVE A LOT OF PEOPLE THAT HAVE HAD  
4 HOSPITALIZATIONS AND HAVE HAD SERIOUS INJURIES IN WHICH THEIR  
5 THIRD-PARTY PAYOR HAS PAID CLAIMS. AND, THEREFORE, I'M NOT  
6 READY TO ADMIT TO A CLASS FOR THE DRUG PIECE AT THIS JUNCTURE  
7 UNTIL WE GET THE LAY OF THE LAND.  
8 I BELIEVE THAT MR. SCHWARTZ AND MR. ARSHAWSKY'S  
9 CLAIM IS A VALID CLAIM. AND IT HAS TO BE DEALT WITH. BUT I  
10 BELIEVE THAT MR. SIPKINS IS RIGHT, THAT IT HAS TO BE LATER  
11 BECAUSE THERE IS THIS BIG CLAIM OUT THERE.  
12 FOR EXAMPLE, WHEN I WAS TALKING ABOUT HICKVA  
13 BEFORE, I DOUBT VERY MUCH THAT HICKVA WILL COME IN FOR A  
14 CLAIM FOR REIMBURSEMENT OF THE COST OF THE MEDICINE. I JUST  
15 DON'T SEE THEM. BUT THEY WOULD MAKE THAT AS A SIDE ISSUE OR  
16 A COLLATERAL ISSUE WHEN THEY COME IN TO MAKE CLAIMS, SAY, FOR  
17 HOSPITAL AND MEDICAL PAYMENT FOR PATIENTS OVER 65 YEARS OF  
18 AGE.  
19 AND, SO, ALL I WANT TO DO IS ALERT THE COURT THAT  
20 MR. SIPKINS DOES RAISE A VALID POINT. SO, DOES MR.  
21 SCHWARTZ. AND THAT'S WHY WHEN I WAS GIVING THE HISTORICAL  
22 PERSPECTIVE, THE PLAINTIFFS ARE READY, WILLING, AND ABLE TO  
23 DEAL WITH BOTH SIDES OF THIS.  
24 BUT MR. SIPKINS IS CORRECT. IT IS THE TIP OF THE  
25 ICEBERG BECAUSE THE REAL LARGE MONIES TO THIRD-PARTY PAYORS

1 ARE GOING TO BE IN THE HOSPITAL AND MEDICAL EXPENSES AS  
2 OPPOSED TO THE COST OF THE DRUG.

3 THANK YOU, YOUR HONOR.

4 THE COURT: COUNSEL.

5 MR. ARSHAWSKY: YOUR HONOR, IF I MAY BRIEFLY, OUR  
6 MOTION WAS FILED ALONG WITH OUR COMPLAINT ON JUNE 10TH. AND  
7 THERE HAS BEEN NO OPPOSITION.

8 WE ARE AWARE FROM SPEAKING WITH OTHER COUNSEL FOR  
9 THIRD-PARTY PAYORS -- WE HAVE BEEN COUNSEL FOR THIRD-PARTY  
10 PAYORS IN SOME OTHER CASES AND RELATED CASES. AND THEY'RE  
11 AWARE OF THE BAYCOL LITIGATION. THEY HAVE NOT STEPPED  
12 FORWARD AND FILED CLAIMS.

13 WE ARE SEEKING A STRUCTURE IN ACCORDANCE WITH THE  
14 MANUAL FOR COMPLEX LITIGATION THAT THERE BE A STRUCTURE  
15 APPOINTED EARLY ON -- MUCH AS THIS COURT APPOINTED IN THE  
16 BEGINNING OF THE CASE -- A STRUCTURE FOR THE INDIVIDUAL  
17 PLAINTIFF CONSUMERS.

18 TO THE EXTENT THAT AT A LATER POINT COMPANIES LIKE  
19 SIGNA, AETNA, OR THE BLUE CROSSES EMERGE -- AND, IN FACT, WE  
20 HAVE BEEN TALKING WITH COUNSEL REPRESENTING ONE BLUE CROSS  
21 ENTITY IN TERMS OF WORKING WITH US -- THAT WE WOULD WORK WITH  
22 THEM TO WORK TOWARDS A COMMON GOAL OF COORDINATING THE  
23 THIRD-PARTY PAYOR EFFORTS IN THIS CASE SHOULD THEY WISH TO  
24 STEP FORWARD AND DO SO AT THIS POINT.

25 THE POINT THAT MR. CHESLEY MADE AT THE START OF

1           THESE PROCEEDINGS IS A VALID ONE.   IN AN ANTITRUST DRUG CASE  
2           THAT SEVERAL COUNSEL HERE HAVE BEEN INVOLVED WITH, THE  
3           SYNTHROID MATTER, THERE WAS A CASE SEVERAL YEARS BACK WHERE  
4           THE CONSUMERS ENTERED INTO A GLOBAL SETTLEMENT.   AND AT THAT  
5           STAGE, THE THIRD-PARTY PAYORS CAME IN TO PROTEST THAT THEIR  
6           CLAIMS WERE BEING RELEASED BY THE SCOPE OF THE RELEASE.  
7           I THINK THERE'S BEEN SOME UNDERSTANDING SINCE THEN  
8           FROM BOTH SIDES OF THE TABLE THAT IT'S IMPORTANT TO HAVE ALL  
9           THE INTEREST AT THE TABLE SOMEWHERE EARLY ON THAT THIS MOTION  
10          IS DESIGNED TO FACILITATE THAT.

11          THANK YOU.

12          THE COURT:   ANYTHING FURTHER, MR. SIPKINS?

13          MR. SIPKINS:   JUST VERY BRIEFLY, YOUR HONOR.   I  
14          THOUGHT I HAD MADE IT CLEAR, BUT, PERHAPS, I DIDN'T.  
15          WE'RE NOT ASKING FOR AN INORDINATE DELAY HERE.   ALL  
16          I AM SUGGESTING IS THAT WE WAIT UNTIL THE NEXT STATUS  
17          CONFERENCE AND GIVE AN OPPORTUNITY TO THOSE LARGER  
18          THIRD-PARTY PAYORS WHO HAD CLAIMS TO COME IN AND BE HEARD.  
19          THAT'S ALL.

20          THE COURT:   ANY OBJECTIONS TO THAT, MR. ZIMMERMAN?

21          MR. ZIMMERMAN:   NO.   I DON'T HAVE ANY OBJECTION TO  
22          THAT, YOUR HONOR.   BUT I DO -- I DO THINK THAT A CERTAIN  
23          OPPORTUNITY AND THE KNOWLEDGE IS OUT THERE.   AND I HAVE SEEN  
24          MR. SCHWARTZ AND MR. ARSHAWSKY VIGOROUSLY REPRESENTING THESE  
25          INTERESTS IN COMING FORWARD.   AND I THINK THAT IN SOME WAYS

1 SPEAKS VOLUME -- VOLUMES ABOUT THEIR BONA FIDES.  
2 BUT I HAVE NO PROBLEM IN WAITING A LITTLE BIT,  
3 RECOGNIZING THAT STEVE SCHWARTZ AND JOE ARSHAWSKY WERE  
4 PRIMARY MOVERS IN THIS. AND I'M SURE THE COURT WILL TAKE  
5 THAT INTO CONSIDERATION. AND WE CAN HAVE THIS RESOLVED AT  
6 THE SEPTEMBER CONFERENCE IN PHILADELPHIA.  
7 BUT I DO THINK THE IMPORTANT POINT IS WHAT WAS STAN  
8 SAID, AND I THINK JOE ARTICULATED AGAIN AS WELL, IS THAT  
9 BRINGING THEM NOW, IT WAS MY GOAL BECAUSE WE WANT -- WE WERE  
10 TRYING TO DO THIS BY LEARNING FROM ALL THE THINGS THAT HAVE  
11 HAPPENED IN THE PAST. BY WAITING, I THINK WE DON'T DO  
12 OURSELVES ANY SERVICE. AND BY BRINGING IT IN EARLY, GETTING  
13 IT UPFRONT AND TO THE LIGHT OF DAY, I THINK WE WILL DO THE  
14 MDL AND EVERYONE IN THE COUNTRY WHO HAS LITIGATION INVOLVED  
15 IN THE MDL, WE WILL DO A BETTER SERVICE TO THE GENERAL  
16 LITIGATION.  
17 THE COURT: YOU CAN STILL GET A PROPOSED ORDER TO  
18 ME TWO WEEKS, SO I CAN LOOK AT IT. WE'LL PUT THIS ON MY  
19 CALENDAR FOR THE SEPTEMBER MEETING IN PHILADELPHIA.  
20 MR. ZIMMERMAN: THANK YOU.  
21 THE COURT: AND YOU CAN CONTINUE WORKING WITH  
22 COUNSEL TO WRAP THIS UP. MORE THAN LIKELY, NO ONE ELSE IS  
23 GOING TO BE COMING IN AT THIS POINT.  
24 MR. ZIMMERMAN: VERY GOOD.  
25 THANK YOU, YOUR HONOR.

1 THE COURT: LET'S MOVE ON.

2 MR. ZIMMERMAN: THE NEXT ITEM ON CALENDAR, 8, THE  
3 INTERNATIONAL COORDINATION.

4 AS THE COURT KNOWS, A REPORT WAS FILED BY  
5 PLAINTIFFS' REPORT AND REQUEST FOR CANADIAN CLASS ACTION  
6 COORDINATION.

7 I WOULD LIKE TO HAVE ELIZABETH CABRASER BRING US UP  
8 TO DATE ON THE INTERNATIONAL COORDINATION EFFORT. AND THE  
9 DEFENDANTS HAVE A POSITION QUITE ADVERSE TO INTERNATIONAL  
10 COORDINATION, BUT I THINK MS. CABRASER CAN BRING US UP TO  
11 DATE ON WHEN THIS IS AND WHAT'S OUR POSITION.

12 THANK YOU.

13 MS. CABRASER: GOOD MORNING, YOUR HONOR.

14 THE COURT: GOOD MORNING.

15 MS. CABRASER: THE ASPECTS OF INTERNATIONAL  
16 COORDINATION I CAN SPEAK TO IS THE REQUEST THAT WAS MADE BY  
17 THE RASHOND DENOVA FIRM ON BEHALF OF PLAINTIFFS' COUNSEL IN  
18 THE PROPOSED CLASS ACTIONS THAT ARE ON FILE IN THE CANADIAN  
19 COURTS.

20 AS YOUR HONOR IS AWARE FROM THE REPORT THAT WE  
21 FORWARDED TO YOU AND TO DEFENDANTS EARLY IN JUNE, THERE ARE  
22 SEVERAL CLASS ACTIONS ON FILE. THE PLAINTIFFS' COUNSEL HAD  
23 INFORMALLY AGREED TO COORDINATE -- AND I THINK PROBABLY  
24 CLOSER TO COOPERATE THAN COORDINATE SINCE IT'S INFORMAL. THE  
25 RASHOND DENOVA FIRM IS THE INFORMAL SPOKESPERSON FOR THAT

1           GROUP VIS-A-VIS THE REQUEST FOR COORDINATION OF DISCOVERIES  
2           WITH THIS COURT.  
3           OBVIOUSLY, THE EXTENT TO WHICH DOCUMENTS IN  
4           DEPOSITION TESTIMONY AND OTHER EVIDENCE WOULD BE ULTIMATELY  
5           ADMISSIBLE IN CANADIAN TRIALS WILL BE THE PROVINCE OF THE  
6           CANADIAN COURTS THAT ARE PRESIDING OVER THOSE CASES.  
7           NONETHELESS, THE TREND HAS BEEN IN CASES WHERE THE  
8           SAME PRODUCTS WERE SOLD AND MARKETED BOTH IN CANADA AND THE  
9           U.S. FOR THERE TO BE SOME DEGREE, AT LEAST, INFORMAL  
10          COOPERATION IN DISCOVERY BETWEEN THE COURT SYSTEMS IN THE TWO  
11          COUNTRIES WITH THE OBVIOUS GOAL OF REDUCING DUPLICATION OF  
12          EFFORT AND COSTS TO SAME DEFENDANTS AND SOMETIMES EVEN THE  
13          SAME INSURERS.  
14          SPECIFICALLY, CANADIAN COUNSEL HAVE ASKED AT THIS  
15          POINT FOR CONSIDERATION OF TWO TYPES OF ACCESS. THE FIRST IS  
16          SIMPLY ACCESS TO THE VERILAW SYSTEM. CANADIAN COUNSEL HAD  
17          ACCESS TO THIS COURT'S ORDERS NOW THROUGH THE COURT WEBSITE  
18          OF WHICH THEY ARE AWARE AS ARE THE CANADIAN COURTS.  
19          ACCESS TO VERILAW WOULD PROVIDE MUCH QUICKER ACCESS  
20          OF NOT ONLY TO COURT ORDERS AND TRANSCRIPTS OF HEARINGS AND  
21          CONFERENCES, BUT TO THE BRIEFS AND PLEADINGS THAT ARE BEING  
22          FILED IN THE MDL CASES. AND AS FAR AS THE MDL PLAINTIFFS ARE  
23          CONCERNED, WE SEE NO REASON WHY THAT SHOULD NOT BE  
24          ACCOMMODATED.  
25          THE SECOND ASPECT OF THIS REQUEST IS FOR ACCESS TO

1 THE DEPOSITORY ON ESSENTIALLY THE SAME TERMS AND CONDITIONS  
2 THAT MDL PLAINTIFFS' COUNSEL HAVE ACCESS TO THE DEPOSITORY --  
3 AGAIN, IN RECOGNITION OF THE FACT THAT MANY OF THE DOCUMENTS  
4 WILL BE COMMON.

5 THIS DOES NOT ELIMINATE THE NEED TO CONDUCT  
6 DISCOVERIES IN CANADA. THERE MAY BE SOME DOCUMENTS AND SOME  
7 INFORMATION THAT IS SPECIFIC AND PERHAPS UNIQUE TO THE  
8 MARKETING SALE OF THE PRODUCT IN CANADA. ULTIMATELY, WE ON  
9 THE MDL SIDE WOULD LIKE TO HAVE ACCESS TO THE CANADIAN  
10 DISCOVERIES AS WELL. THAT WOULD TAKE AN ORDER OF THIS COURT  
11 AND ORDERS BY THE CANADIAN TRIAL JUDGES TO EFFECTUATE.

12 AND, OBVIOUSLY, THE DEFENDANTS WOULD NEED TO BE  
13 HEARD WITH RESPECT TO THEIR CONCERNS ABOUT PRIVILEGE,  
14 ENFORCEABILITY OF PROTECTIVE ORDERS, ET CETERA.

15 WE ARE NOT ASKING THE COURT TO DECIDE THIS TODAY.  
16 WE ARE SIMPLY GIVING AN UPDATE ON THE STATUS.

17 THIS IS NOT WITHOUT PRECEDENT, AS THE REPORT  
18 CANADIAN COUNSEL SUBMITTED TO YOU INDICATES. AND I THINK ONE  
19 OF THE EXHIBITS TO THAT LETTER REPORT WAS AN ORDER BY ONE OF  
20 THE CANADIAN JUDGES IN TORONTO EFFECTUATING DISCOVERY SHARING  
21 WITH AN AMERICAN MDL.

22 THERE HAS BEEN COORDINATION WITH RESPECT TO ACCESS  
23 TO DOCUMENTS IN THE DIET DRUGS MDL. THAT COORDINATION CAME  
24 RATHER LATE IN THE AMERICAN MDL PROCEEDINGS BECAUSE THE  
25 CANADIAN CLASS ACTION, THE WILSON VERSUS SERBIA CASE WAS

1 BEHIND THE AMERICAN PROCEEDINGS. IN FACT, THE CANADIAN CLASS  
2 ACTION WAS CERTIFIED. IT WAS CONFIRMED ON APPEAL. MORE  
3 RECENTLY, CANADA'S HIGH COURT CONFIRMED THE CANADA-WIDE  
4 CERTIFICATION OF THAT CLASS. AND THAT CASE IS NOW PROCEEDING  
5 TO TRIAL IN SEPTEMBER OF THIS YEAR AS AN INJURY CLASS  
6 ACTION.

7 INTERESTINGLY, IN THAT CASE, BECAUSE OF THE  
8 STRUCTURE OF THE CANADIAN HEALTH CARE SYSTEM, WHAT WE WOULD  
9 HAVE AS PRIVATE THIRD-PARTY PAYORS IN THIS COUNTRY, CANADA  
10 HAS BY VIRTUE OF ITS PROVINCIAL HEALTH MINISTRIES, WHO PAY  
11 FOR THE TYPE OF HEALTH-CARE COSTS THAT UNION FUNDS OR  
12 INSURERS PAY IN THIS COUNTRY. SO, IN THE CANADIAN DIET DRUG  
13 PROCEEDINGS, THE HEALTH MINISTRIES OF THE PROVINCES ARE  
14 ENGAGED AS PLAINTIFFS AND ARE PURSUING CLAIMS FOR  
15 REIMBURSEMENT OF THEIR COSTS ALONGSIDE THE PLAINTIFFS WHO ARE  
16 MEMBERS OF THE CERTIFIED CLASS.

17 SO, THERE ARE DEFINITELY SOME PARALLELS BETWEEN  
18 WHAT WOULD OCCUR IN A CANADIAN DRUG-RELATED TORT PROCEEDING  
19 AND WHAT WILL BE OCCURRING BOTH IN THE MDL HERE AND IN THE  
20 COORDINATED STATE COURT ACTIONS.

21 IT'S OUR POSITION THAT SUBJECT TO WORKING OUT THE  
22 MYRIAD DETAILS, AND SUBJECT TO HAVING DUE REGARD AND CONCERN  
23 FOR THE REAL INTEREST THAT DEFENDANTS HAVE WITH RESPECT TO  
24 DISCOVERIES, IN PRINCIPLE, THERE SHOULD BE NO OBJECTION TO AT  
25 LEAST MAKING THE EFFORT TO WORK OUT A PROTOCOL FOR

1 COORDINATION OF DISCOVERY SUCH THAT CANADIAN COUNSEL WOULD  
2 HAVE ACCESS TO DEPOSITORY MATERIALS AND AN APPROPRIATE  
3 PROTECTIVE ORDER SUCH THAT THEY WOULD HAVE ACCESS TO  
4 DEPOSITION TRANSCRIPTS AND, PERHAPS, TO PARTICIPATION IN  
5 DEPOSITIONS AS WELL.

6 THE DECISION, ULTIMATELY, AS TO THE ADMISSIBILITY  
7 FOR TRIAL PURPOSES OF SUCH EVIDENCE WOULD BE WITHIN THE  
8 PROVINCE OF THE CANADIAN COURTS. IT'S BEEN MY EXPERIENCE IN  
9 THE DIET DRUGS CASES SINCE I SERVED AS ONE OF THE PLAINTIFFS'  
10 COUNSEL IN THE WILSON VERSUS SERBIA CASE THAT'S GOING TO  
11 TRIAL, THAT ULTIMATELY DOCUMENTS THAT ARE ADMISSIBLE IN THE  
12 U.S. ARE ADMISSIBLE IN CANADA. DOCUMENTS THAT WOULD NOT BE  
13 ADMISSIBLE AS PRIVILEGED OR OTHERWISE PROTECTED IN THE U.S.  
14 ARE SIMILARLY PROTECTED IN CANADA.

15 SO, THERE WILL NOT BE A TRUE CONFLICT, I DON'T  
16 THINK, WITH RESPECT TO SCOPE OF ALLOWED DISCOVERIES AND  
17 ADMISSIBLE FOR TRIAL -- ADMISSIBILITY FOR TRIAL PURPOSES.  
18 THE ULTIMATE PROTECTION FOR THE PARTIES, OF COURSE, IS THAT  
19 THIS COURT WILL ALWAYS BE MAKING DECISIONS ABOUT DOCUMENTS IN  
20 DISCOVERY FOR THESE PROCEEDINGS. THE CANADIAN COURTS WOULD  
21 HAVE THE ULTIMATE SAY WITH RESPECT TO THE USE OF DOCUMENTS IN  
22 DISCOVERY IN CANADA.

23 BUT IN TERMS OF THE ONGOING PROJECT OF COLLECTING  
24 MATERIALS, REQUESTING DOCUMENTS, REVIEWING DOCUMENTS, CODING  
25 DOCUMENTS, AND TAKING DEPOSITION, THERE IS NO REASON TO

1 COMPLETELY REPLICATE THAT PROCESS BETWEEN THE FEDERAL AND  
2 STATE COURTS HERE IN THIS COUNTRY AND THE COURT SYSTEM IN  
3 CANADA. AND THAT'S JUST SOMETHING THAT WE SUBMIT TO THE  
4 COURT AT THIS TIME FOR ITS ONGOING CONSIDERATION.  
5 THERE MAY BE CLASS CERTIFICATION PROCEEDINGS  
6 SCHEDULED FOR HEARING AS EARLY AS THIS FALL IN CANADA. I AM  
7 NOT SURE THAT SCHEDULE WILL HOLD. WE WILL CONTINUE TO  
8 FORWARD THE REPORTS OF THE CANADIAN COORDINATING COUNSEL TO  
9 THIS COURT SO THAT YOU WILL HAVE AN ONGOING IDEA, YOUR HONOR,  
10 WITH RESPECT TO THE STATUS AND PROSPECT -- PROCESS OF THOSE  
11 -- OF THOSE CASES.  
12 AND ONCE THE JUDGES IN CANADA HAVE SETTLED ON WHO  
13 WILL BE PRESIDING OVER THOSE PROCEEDINGS, WE WOULD HOPE THAT  
14 CONTACT WOULD BE MADE BETWEEN THIS COURT AND THOSE JUDGES.  
15 THANK YOU.  
16 THE COURT: MR. SIPKINS.  
17 MR. SIPKINS: THANK YOU, YOUR HONOR.  
18 YOUR HONOR, LET ME BEGIN TO ADDRESS THIS ISSUE  
19 AGAIN BY READING FROM THE JOINT REPORT, WHICH WAS FILED ON  
20 TUESDAY, WHICH SAYS IN PART WITH RESPECT TO THIS ISSUE,  
21 "AT PRESENT, THERE ARE NO ISSUES FROM THAT  
22 REPORT THAT ARE RIPE FOR DECISION BY THIS COURT."  
23 AND THAT WAS THE BASIS ON WHICH WE WERE PREPARED TO  
24 ADDRESS THE COURT ON THIS ISSUE THIS MORNING.  
25 WHAT MS. CABRASER, I THINK, HAS SAID IS THAT THERE

1 ARE PRESENTLY, YOU KNOW, BEFORE YOU AT LEAST TWO SEPARATE  
2 ISSUES -- ONE IS ACCESS TO VERILAW AND ONE IS SOMETHING WHICH  
3 IS MUCH MORE SUBSTANTIVE.  
4 WITH RESPECT TO THE VERILAW ISSUE, LET ME ADDRESS  
5 THAT VERY BRIEFLY. I STARTED TO FEEL LIKE THE GRINCH THAT  
6 STOLE CHRISTMAS TO SAY, NO, THEY CAN'T HAVE ACCESS BECAUSE  
7 EVERYBODY IS IN FAVOR OF COMMUNICATION AND OPEN FLOW OF  
8 INFORMATION. AND, SO, ULTIMATELY, I'M GOING TO TELL YOU THAT  
9 WE DON'T OPPOSE IT. BUT LET ME TELL YOU WHY THERE WAS SOME  
10 HESITANCY ON OUR PART IN AGREEING TO IT.  
11 AND THAT IS BECAUSE, FRANKLY, THE THOUSAND-MILE  
12 JOURNEY BEGAN WITH THE FIRST STEP. AND IT'S THE LARGER  
13 ISSUES THAT CONCERN US.  
14 WE FILED A MEMORANDUM WITH YOU IN JUNE, WHICH  
15 POINTED OUT NUMEROUS, BOTH PROCEDURAL AND SUBSTANTIVE, ISSUES  
16 CONCERNING THE REQUEST THE CANADIANS COORDINATE BOTH WITH  
17 RESPECT TO THE LACK OF JURISDICTION THAT THIS COURT HAS OVER  
18 THE CANADIAN LAWYERS, NUMBER ONE, IN TERMS OF ACCESS TO  
19 DOCUMENTS AND SO FORTH.  
20 AND, SECONDLY, THE FACT THAT CANADIAN PROCEDURES  
21 ARE IMMENSELY DIFFERENT IN MANY RESPECTS THAN THE U.S.  
22 PROCEDURES. FOR EXAMPLE, NO MERITS DISCOVERY PRIOR TO CLASS  
23 CERTIFICATION, WHICH, OF COURSE, THEY WOULD HAVE ACCESS TO IF  
24 THEY WERE TO COORDINATE HERE. SO, THEY'D HAVE A MUCH  
25 DIFFERENT ADVANTAGE, FOR EXAMPLE, IN CANADA THAN THE TYPICAL

1 CANADIAN PLAINTIFFS.

2 SO, WE THINK THAT THE BROADER ISSUE, YOUR HONOR,

3 NEEDS TO HAVE FULL HEARING. WE WOULD SUGGEST THAT AT AN

4 APPROPRIATE TIME IT BE ADDRESSED IN DEPTH. AT THIS POINT, WE

5 ARE WILLING TO AGREE -- I THINK THE PRETRIAL ORDER 18 WILL

6 HAVE TO BE AMENDED SINCE IT ONLY PERMITS ACCESS TO VERILAW TO

7 PARTIES IN THIS LITIGATION. AND WE DON'T WANT TO SUGGEST BY

8 ALLOWING THE CANADIAN PLAINTIFFS ACCESS TO VERILAW, THAT THEY

9 ARE, IN FACT, VIEWED AS PARTIES TO THIS LITIGATION.

10 WE DO NOT THINK THAT THEY ARE. WE DO NOT THINK

11 THAT THEY SHOULD BE. AND AT A FUTURE DATE WITHIN AN

12 APPROPRIATE TIME, WE WILL ADDRESS THAT ISSUE IN DETAIL.

13 THE COURT: THANK YOU.

14 ANYTHING FURTHER ON THAT ISSUE?

15 MS. CABRASER: JUST ONE POINT, YOUR HONOR, ON THE

16 DIFFERENCE IN THE SCOPE OF DISCOVERIES AND THE DEFENDANTS'

17 CONCERN ON THAT POINT. AND WE CAN BRIEF THAT FURTHER.

18 IF YOU READ THE CLASS PROCEEDINGS ACT, FOR EXAMPLE,

19 OF ONTARIO, AND YOU READ RULE 23, I THINK YOU WOULD GET --

20 YOU WOULD GET THE IMPRESSION FROM READING OF BOTH STATUTES

21 THAT CLASS CERTIFICATION SHOULD PRECEDE THE DEVELOPMENT OF

22 MERITS AND DISCOVERY.

23 IN FACT, IN BOTH JURISDICTIONS, IT IS DISCRETIONARY

24 WITH THE COURT. AND THE EXTENT MERITS DISCOVERY. IT'S

25 ALLOWED OR REQUIRED FOR FURTHER CLASS CERTIFICATION.

1 DECISION IS MADE AND CAN VARY CONSIDERABLY. IT'S  
2 DISCRETIONARY WITH THIS COURT IN THESE PROCEEDINGS. IT'S  
3 DISCRETIONARY WITH THE CANADIAN JUDGES IN THOSE PROCEEDINGS.  
4 AND, IN FACT, IN THE WILSON VERSUS SERBIA DIET  
5 DRUGS CLASS PROCEEDINGS IN ONTARIO, THERE WAS SUBSTANTIAL  
6 MERITS-RELATED DISCOVERY BEFORE JUSTICE COMING, WHO WAS THE  
7 TRIAL JUDGE THERE, MADE HIS CLASS CERTIFICATION DECISION.  
8 SO, THAT'S AN ISSUE THAT IS GOING TO AWAIT FURTHER  
9 DEVELOPMENT. BUT I THINK IT'S IMPORTANT TO UNDERSTAND THAT  
10 FROM OUR POINT OF VIEW HERE IN THE U.S., WE HAVE NO INTEREST  
11 IN PROVIDING THROUGH THE BACK DOOR INFORMATION TO LITIGANTS  
12 IN CANADA THAT THEY WOULD NOT OTHERWISE BE ENTITLED TO.  
13 THEY'RE GOING TO BE FOLLOWING THE DIRECTIVE OF  
14 THEIR COURT WITH RESPECT TO WHAT THEY CAN REQUEST. WE JUST  
15 DON'T WANT THE BARRIER TO BE A BARRIER OF OUR MAKING IN THIS  
16 COUNTRY, SO THAT THERE IS AN UNNECESSARY NEED TO DUPLICATE  
17 DISCOVERIES THAT HAVE ALREADY BEEN DONE HERE.  
18 THE COURT: THANK YOU.  
19 MR. ZIMMERMAN: WITHOUT BELABORING THE POINT AT  
20 ALL, I JUST WOULD ASK THE COURT TO TAKE A LOOK AT WHAT JUDGE  
21 TUNHEIM HAS DONE IN THE ST. JUDE'S LITIGATION WHEN THIS  
22 MATTER DOES GET BEFORE THE COURT.  
23 MR. CAPRETZ, WHO IS IN THE COURTROOM, IS CO-LEAD  
24 COUNSEL IN THE ST. JUDE'S LITIGATION. AND HE TOLD ME THAT  
25 THERE IS SOME COORDINATION EFFORTS GOING ON IN THIS THOSE

1 CLASS ACTIONS. BUT, AGAIN, IT SHOULD BE AND WILL BE FULLY  
2 BRIEFED. I'D JUST ASK THE COURT AT AN APPROPRIATE TIME TO  
3 LOOK AT WHAT OUR COLLEAGUE JUDGE TUNHEIM HAS DONE IN THAT  
4 LITIGATION.

5 LASTLY, ON OUR AGENDA, YOUR HONOR, IS THE INSURANCE  
6 COVERAGE ISSUE. AND IT REALLY IS JUST A MATTER OF UPDATE.  
7 IN ANY ONE OF THESE CASES, IT IS VERY, VERY  
8 IMPORTANT THAT COUNSEL ON BOTH SIDES, BUT, CERTAINLY,  
9 PLAINTIFFS' COUNSEL THAT HAVE NO PRIVY -- OR HAVE NO ACCESS  
10 TO THIS INFORMATION BE ABLE TO FULLY EXPLORE THE INSURANCE  
11 POLICIES, THE COVERAGES, THE DEDUCTIBLES, THE LIMITS.  
12 AND WE HAVE FORMED A COMMITTEE ON THE PSC TO DO  
13 THAT, PEOPLE THAT HAVE EXPERTISE IN REVIEWING THOSE POLICIES  
14 AND UNDERSTANDING THOSE POLICIES AND UNDERSTANDING THOSE  
15 COVERAGES WHO HAVE DONE IT IN OTHER COMPLEX MASS TORT  
16 LITIGATION.

17 THAT ISSUE IS BEING FULLY EXPLORED. ALTHOUGH, WE  
18 DON'T HAVE ACCESS TO ALL OF THAT YET, WE WILL MEET AND CONFER  
19 AND RESOLVE THE PRODUCTION. BUT I AM JUST ADVISING THE COURT  
20 THAT WE ARE DOING A FULL STUDY OF THOSE COVERAGES SO THAT WE  
21 HAVE THAT INFORMATION ONCE THOSE DOCUMENTS ARE AVAILABLE.  
22 CERTAIN OF THAT INFORMATION HAS BEEN PROVIDED, I  
23 BELIEVE, THE ANSWERS TO THE INTERROGATORIES. WE WILL BE  
24 REQUESTING MORE. AND WE WILL TRY AND GET THAT -- THAT  
25 RESOLVED. BUT THIS IS JUST A MATTER OF UPDATE.

1 MR. SIPKINS: AGAIN, YOUR HONOR, THIS ISSUE WAS  
2 RAISED FOR THE FIRST TIME ON MONDAY. WE JUST BEGAN  
3 DISCUSSIONS WITH MR. ZIMMERMAN AND THE PSC. AND WE LOOK  
4 FORWARD TO WORKING WITH THEM TO TRY TO RESOLVE THIS ISSUE.

5 THE COURT: ANY OTHER ISSUES THAT SHOULD BE BROUGHT  
6 TO THE COURT'S ATTENTION BEFORE WE RECESS?

7 MS. TANTILLO: YOUR HONOR -- I'M SORRY, YOUR  
8 HONOR.

9 THE COURT: GOOD MORNING. STEP TO THE PODIUM,  
10 PLEASE.

11 MS. TANTILLO: MY NAME IS ROSE MARIE TANTILLO.  
12 AND I WAS -- WE HAD A MOTION TO DISMISS IN THE  
13 RUONA MATTER. AND WE WERE TOLD THAT YOU HAD REQUESTED ORAL  
14 ARGUMENT.

15 HAS ANYTHING CHANGED IN THAT REGARD?

16 THE COURT: NO. WE ARE GOING TO HEAR THAT.

17 MS. TANTILLO: OH, I'M SORRY. I THOUGHT YOU WERE  
18 AT THE END OF YOUR CALENDAR.

19 THANK YOU.

20 THE COURT: I'M SORRY?

21 MS. TANTILLO: I THOUGHT YOU WERE AT THE END OF  
22 YOUR CALENDAR.

23 THE COURT: WE ARE. BUT WE ARE -- I'M GOING TO  
24 CHECK TO SEE IF THERE IS ANYTHING ELSE. AND THEN WE CAN HEAR  
25 THE ARGUMENT ON YOUR ISSUE.

1 ANYTHING ELSE, MR. ZIMMERMAN?

2 MR. ZIMMERMAN: NO, THERE IS NOT, YOUR HONOR.

3 WE HAVE COMPLETED THE ITEMS ON THE JOINT REPORT  
4 NUMBER TWO. WE HAVE MADE AN EFFORT IN CONJUNCTION WITH THE  
5 COURT'S INSTRUCTION TO HAVE ALL OF THE ISSUES THAT WE NEED TO  
6 BRING BEFORE THE COURT -- I BELIEVE WE NEED TO BRING BEFORE  
7 THE COURT -- FULLY UNDERSTOOD BY BOTH SIDES BEFORE WE COME TO  
8 COURT.

9 OBVIOUSLY, THERE MIGHT BE THINGS THAT OCCUR. AND I  
10 DON'T WANT TO EVER BE IN THE POSITION OF SAYING THAT THERE  
11 WON'T BE. BUT WE ARE TRYING VERY HARD TO BRING EVERYTHING  
12 BEFORE THE PARTIES IN FULL DISCLOSURE PRIOR TO HEARING. I  
13 THINK WE HAVE DONE IT. THERE ARE NO FURTHER ISSUES ON MY  
14 AGENDA. I DON'T KNOW IF THERE ARE ANY FURTHER ISSUES ON  
15 DEFENDANTS' AGENDA, OTHER THAN SANCTION ME FOR BEING LATE.  
16 BUT, PERHAPS, THE COURT COULD STAY THAT FOR A WHILE.  
17 THE COURT: LET'S DEAL WITH THE LONGS DRUG MATTER.

18 MS. TANTILLO: I'LL START OVER.

19 GOOD MORNING, YOUR HONOR.

20 THE COURT: GOOD MORNING.

21 MR. TANTILLO: MY NAME IS ROSE MARIE TANTILLO. I

22 AM REPRESENTING DEFENDANT LONGS DRUGS IN THE RUANA VERSUS  
23 BAYER MATTER.

24 AND WE HAVE FULLY BRIEFED THIS MOTION. THERE WAS A  
25 MOTION TO STRIKE ALSO THAT ACCOMPANIED THE MOTION TO

1 DISMISS. APPARENTLY, PLAINTIFFS HAVE NOT FILED AN  
2 OPPOSITION. SO, WE WOULD ASSUME THAT THEY HAVE NO  
3 DISAGREEMENT IN OUR PROPOSED MOTIONS TO STRIKE. AND WE  
4 REQUEST THAT THE COURT MAKE THE APPROPRIATE ORDERS ON BEHALF  
5 OF DEFENSE.

6 ALSO, PLAINTIFF IN THE MOTION TO DISMISS HAS NOT  
7 OPPOSED THE DISMISSAL OF THE THIRD CAUSE OF ACTION FOR STRICT  
8 LIABILITY. AND WE ASSUME THAT THE COURT WOULD ALLOW THAT,  
9 ALSO.

10 IN THAT THE BRIEF HAS BEEN FULLY DISCUSSED, I WON'T  
11 TAKE UP THE COURT'S TIME REITERATING EVERYTHING THAT IS IN  
12 THERE. WHAT I WOULD LIKE TO SAY IS THAT PLAINTIFF HAS CAST A  
13 BROAD NET ON THIS CASE. AND WE ARE A SMALL FISH CAUGHT UP IN  
14 THAT NET AND AT THE END OF THE FOOD CHAIN. AND IT SEEMS  
15 APPARENT THAT WE WEREN'T INVITED TO THE COCKTAIL PARTY. SO,  
16 I GUESS, YOU KNOW -- I DIVERGED.

17 BUT WHAT I WOULD LIKE TO SAY IS THIS -- THIS IS NOT  
18 A CASE WHERE THE WRONG MEDICATION WAS GIVEN -- AND THAT WRONG  
19 MEDICATION HAPPENED TO BE BAYCOL. THIS IS A CASE WHERE A  
20 PHARMACIST RECEIVED A VALID PRESCRIPTION OF A DRUG THAT WAS  
21 AT THAT TIME APPROVED BY THE FDA, THAT THERE WAS NO WARNINGS,  
22 NO TAKING OFF OF THE MARKET OF THAT DRUG. IT WAS PROPERLY  
23 FILLED AND DISPENSED. THERE HAS BEEN NO DOUBT ABOUT THAT IN  
24 THE PLEADINGS AS THEY HAVE GONE BACK FORTH ON THIS MOTION.  
25 LONGS IS LIKE MANY OTHER PHARMACIES AROUND THE

1 NATION. IT'S NO DIFFERENT THAN THE PHARMACY THAT IS IN  
2 RAWLINGS, THE PHARMACY THAT IS IN WALGREENS, AN INDEPENDENT  
3 PHARMACY OUT ON THE STREET.  
4 THE JOB OF THE PHARMACY AND THE PHARMACIST IS TO  
5 GET A VALID PRESCRIPTION, VERIFY ITS VALIDITY, APPROPRIATELY  
6 FILL IT, DISPENSE IT, OFFER CONSULTATION UNDER VARIOUS  
7 ASPECTS OF THE REGULATIONS. AND THAT WAS DONE IN THIS CASE.  
8 PLAINTIFFS HAVE PUT FORTH IN THEIR COMPLAINT  
9 NUMEROUS STATEMENTS THAT DRAG ALL DEFENDANTS IN AS THOUGH  
10 THERE IS NO DISTINCTION BETWEEN THE MANUFACTURER, THE  
11 DISTRIBUTOR, THE RESEARCH ON THE MEDICATION.  
12 ALL THAT LONGS IS IS AN AGENT BETWEEN THE DOCTOR  
13 WHO WRITES THE PRESCRIPTION AND DISPENSING THAT MEDICATION TO  
14 THE PATIENT.  
15 PLAINTIFFS HAVE HUNG THEIR HAT ON WHAT THEY SAY IS  
16 A PER SE NEGLIGENT VIOLATION OF THE STATUTE, CALIFORNIA CODE  
17 OF REGULATIONS 1707.2 AS TO FAILING TO PROVIDE CONSULTATION.  
18 HOWEVER, THEY HAVE PROVIDED ABSOLUTELY NO FACTS TO  
19 SAY WHAT THE CONSULTATION SITUATION WAS. DID THE PATIENT GO  
20 AND PICK UP THE MEDICATION AT THE PHARMACY. HAS SOMEONE  
21 SAID, NO, WE CAN'T GIVE YOU A CONSULTATION. DID ANOTHER  
22 AGENT OF THAT PATIENT GO TO THE PHARMACY AND PICK UP THE  
23 MEDICATION. WAS THE MEDICATION DELIVERED AT HOME, ET CETERA,  
24 ET CETERA, ET CETERA.  
25 IT IS JUST A PLOY TO PUT OUT SOME SORT OF HOOK TO

1 KEEP LONGS INTO THIS CASE. AND WITH ALL DUE RESPECT, A GREAT  
2 DEAL OF THIS INVOLVES THE MOTION TO REMAND.

3 IT'S BEEN ADMITTED THAT NOTICE WAS PROVIDED TO THE  
4 DOCTORS BY BAYER OF SOME POTENTIAL PROBLEMS WITH BAYCOL. NO  
5 WHERE IN THE PLEADINGS IS THERE ANY ALLEGATION THAT LONGS HAD  
6 THE SAME NOTICE AND WHAT THE PHARMACISTS WERE TO DO OR NOT TO  
7 DO WITH THAT.

8 THE PHARMACISTS ARE IN A VERY PRECARIOUS POSITION.

9 ALTHOUGH THEY HAVE OBLIGATIONS TO LOOK TOWARDS DRUG  
10 INTERACTIONS, PROBLEMS WITH -- VARIANCES OF HOW TO TAKE  
11 MEDICATION, WITH OR WITHOUT FOOD, ET CETERA, THEY CANNOT  
12 OVERSTEP THE PHYSICIAN/PATIENT RELATIONSHIP. AND THAT IS A  
13 VERY WELL-RECOGNIZED PORTION OF THE LAW THAT WAS ESTABLISHED  
14 IN THE CALIFORNIA CASES.

15 THERE HAS BEEN NOTHING THAT HAS BEEN SPECIFICALLY  
16 STATED AS TO WHAT THE FRAUDULENT REPRESENTATION WAS --  
17 MERELY, SPECULATIVE ALLEGATIONS THAT THEY MADE SOME SORT OF  
18 STATEMENTS TO SAFETY AND WARNINGS, BUT WITHOUT SAYING WHAT  
19 THOSE WERE.

20 FINALLY, THEY STATED THAT LONGS INCLUDED  
21 INSTRUCTIONS AND/OR INFORMATIONAL PACKETS CONCERNING BAYCOL  
22 ALONG WITH A FILLED PRESCRIPTION. WELL, WHAT WAS IT? WAS IT  
23 INSTRUCTION? WAS IS INFORMATIONAL PACKETS?

24 IT'S A BOILERPLATE PLEADING, YOUR HONOR. AND I  
25 RESPECTIVELY REQUEST THAT THE COURT DISMISS THE ACTION

1           AGAINST LONGS.

2           THE COURT:   THANK YOU.

3           COUNSEL.

4           MR. PITRE:   THANK YOU, YOUR HONOR.

5           AS YOU KNOW, WE HAVE THE MOTION TO REMAND.   AND, OF  
6           COURSE, IF THE COURT GRANTS THE MOTION TO REMAND, WE BELIEVE  
7           THAT THIS MATTER WILL BE MOOT, AND THAT THE MATTER WILL BE  
8           HANDLED BEFORE THE STATE COURT.

9           SO, JUST TO PROCEED SO WE DON'T WASTE EVERYBODY'S  
10          TIME, FIRST OF ALL, UNDER THE HUGGINS DECISION, WHICH I CITED  
11          IN MY PAPERS, THERE IS A VIABLE CLAIM AGAINST THE DRUG  
12          PHARMACEUTICAL COMPANY -- HERE, LONGS.

13          AND IF YOU LOOK AT THE ALLEGATIONS OF THE  
14          COMPLAINT, WE DID NOT ALLEGE THAT THE ONLY THING LONGS DID  
15          WAS TO FILL A PRESCRIPTION.   IN FACT, IT WAS CUSTOMARILY  
16          DONE.

17          WHAT WE ALLEGED IS THAT WHEN THAT PERSON COMES IN  
18          TO PICK UP THEIR PRESCRIPTION, THEY GET A PACKAGE INSERT THAT  
19          IS STAPLED TO THE BAG.   AND THERE'S A CALIFORNIA STATUTE THAT  
20          IS RIGHT ON POINT WHICH WAS CITED IN OUR PAPERS THAT REQUIRES  
21          THE PHARMACIST THE VERY FIRST TIME THAT A DRUG IS PRESCRIBED  
22          TO ADVISE AND CONSULT THE PATIENT.   AND WE HAVE ALLEGED  
23          THAT.

24          I BELIEVE THAT THE STANDARD THAT LONGS WANTS TO  
25          HOLD US TO IS ONE OF PROOF THAT IS NOT REQUIRED AT A PLEADING

1           STAGE.  THEY SEEM TO REQUIRE EVIDENTIARY PROOF.  AND I DON'T  
2           BELIEVE THE PLEADING STANDARDS ADOPTED BY CALIFORNIA OR THE  
3           FEDERAL COURT IS ONE THAT REQUIRES PLEADING EVIDENTIARY  
4           FACTS.  IT REQUIRES PLEADING ULTIMATE FACTS SUFFICIENT TO  
5           GIVE PEOPLE NOTICE OF THE TYPE OF CLAIMS THAT ARE THERE.  
6           WE HAVE ALLEGED THOSE.  I STAND BY WHAT WAS IN OUR  
7           PLEADINGS AND PAPERS.  THERE IS A VIABLE CLAIM THAT IS  
8           ASSERTED.

9           AND, SECONDARILY, ON THE MOTION TO STRIKE, YOUR  
10          HONOR, I BELIEVE THAT THEIR MOTION TO STRIKE GOES A LITTLE  
11          TOO BROAD.  THEY HAVE SAID IN THEIR PAPERS, WHICH IS WHAT WE  
12          AGREE TO, IS THAT BECAUSE THE DECEDENT DIED -- SHE WAS  
13          TREATED FOR A PERIOD OF ABOUT SIX MONTHS WHEN SHE HAD  
14          DEVELOPED THE DISEASE THAT WE'RE ALL FAMILIAR WITH,  
15          RHABDOMYOLYSIS, WHICH I NEVER PRONOUNCE CORRECTLY.  BUT SHE  
16          DEVELOPED THAT DISEASE, WAS TREATED FOR ABOUT SIX TO EIGHT  
17          WEEKS AND DIED.

18          UNDER CALIFORNIA LAW, ONCE SHE DIED, HER CLAIM FOR  
19          PAIN AND SUFFERING DURING THAT PERIOD CEASES.  AND WE AGREE  
20          THAT CLAIM IS NO LONGER VIABLE.

21          HOWEVER, WHAT HAS NOT BEEN CONTESTED IS THAT THERE  
22          IS NOT A COMPENSATORY CLAIM FOR THE LOSS OF LOVE, SOCIETY,  
23          COMFORT, AND ATTENTION, OF THE LOSS OF THAT LOVED ONE BY HER  
24          FAMILY MEMBERS.

25          TO THE EXTENT THAT THE MOTION TO STRIKE SEEKS TO

1 STRIKE THAT, IT GOES TOO FAR. THAT'S WHAT WE HAVE ADMITTED  
2 IN OUR PAPERS.

3 BUT ON THE MOTION ITSELF, WE BELIEVE THERE ARE  
4 VIABLE CLAIMS AGAINST LONGS, THAT THEY SHOULD REMAIN IN  
5 HERE. AND, HOPEFULLY, YOUR HONOR, THE COURT WILL LOOK KINDLY  
6 ON OUR REQUEST TO REMAND THIS ACTION.

7 THANK YOU.

8 THE COURT: THANK YOU, COUNSEL.

9 ANYTHING ELSE THAT SHOULD BE BROUGHT TO THE COURT'S  
10 ATTENTION?

11 COUNSEL, I WILL TAKE THAT MATTER UNDER ADVISEMENT  
12 AS I HAVE TAKEN THE REMAND MATTER UNDER ADVISEMENT.

13 ANYTHING ELSE THAT ANYONE WANTS TO BRING TO THE  
14 COURT'S ATTENTION BEFORE WE RECESS?

15 MR. ZIMMERMAN: COULD I APPROACH?

16 THE COURT: YOU MAY.

17 (THE COURT AND MR. ZIMMERMAN CONFERRING.)

18 THE COURT: ANYTHING ELSE?

19 MR. ZIMMERMAN: NO, YOUR HONOR.

20 THE COURT: ALL RIGHT.

21 IT'S BEEN THE COURT'S PLEASURE TO COME TO  
22 CALIFORNIA AND HAVE THE HOSPITALITY OF THE LAWYERS OF  
23 CALIFORNIA AND THE UNITED STATES DISTRICT COURT STAFF.  
24 EVERYONE HAS TREATED MY -- TREATED ME AND MY STAFF  
25 IN THE BEST OF WAYS. AND I THANK YOU.

1 ANYTHING ELSE? IF NOT, WE WILL RECESS. AND I  
2 BELIEVE I WILL SEE A COUPLE PEOPLE BACK IN CHAMBERS.

3 THE CLERK: ALL RISE, PLEASE.

4 THIS COURT NOW STANDS ADJOURNED.

5 (PROCEEDINGS ADJOURNED AT 11:03 A.M.)

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C E R T I F I C A T E

I, MARGARET J. BABYKIN, HEREBY CERTIFY THAT THE  
FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT FROM THE RECORD  
OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

MARGARET J. BABYKIN, CSR

DATED